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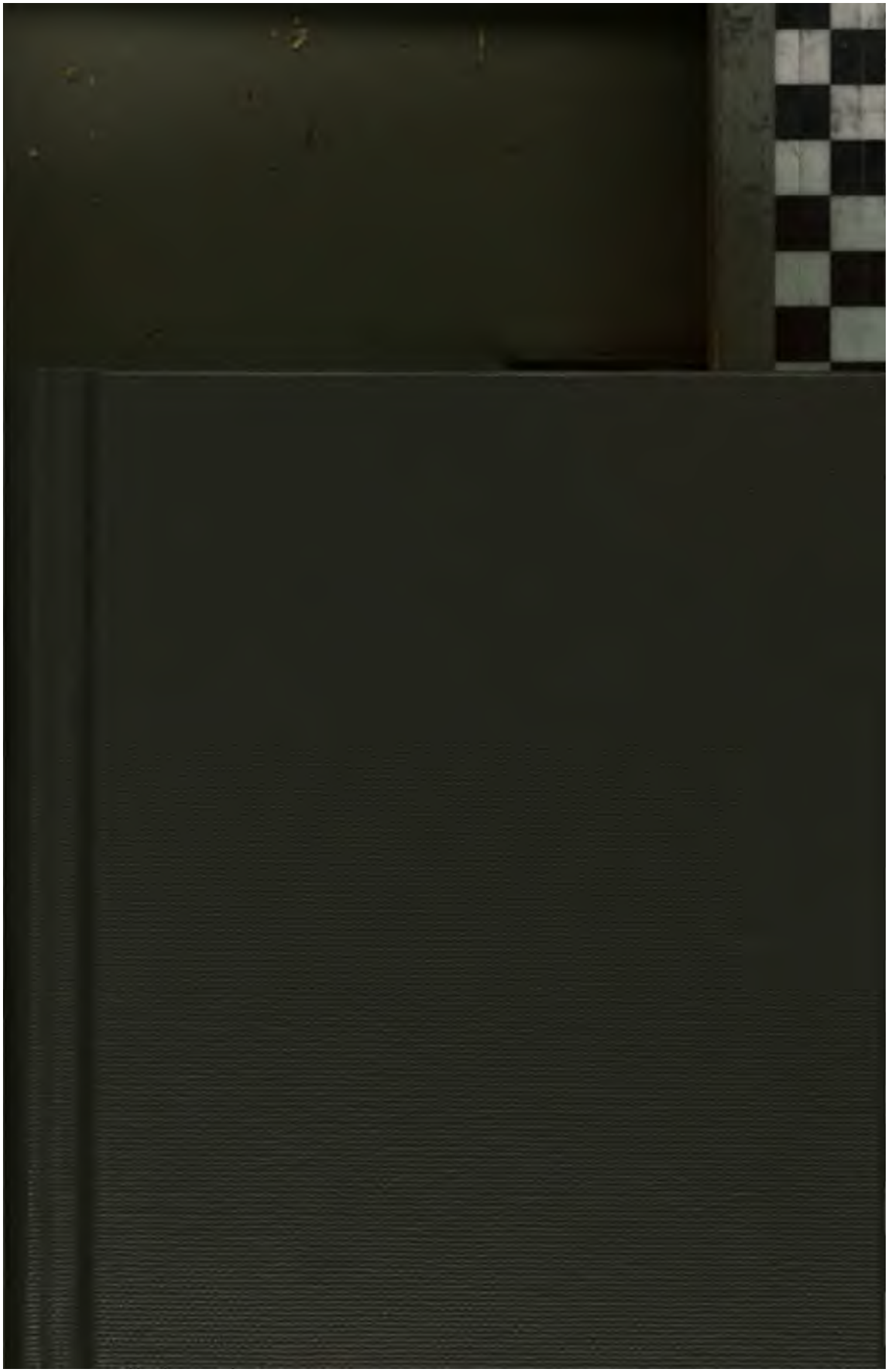

MANUAL
OF
CORPORATE MANAGEMENT
WITH FORMS

Full and correct information for the conduct and transaction of all kinds of Corporate business, from organization, adoption of BY-LAWS, to winding up proceedings. Useful and of pecuniary value to lawyers, corporate officers, directors, agents, and members.

By

T. CARL SPELLING.

Author of "Law of Private Corporations," "Trusts and Monopolies," "Extraordinary Relief," "Injunctions, Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari," "New Trial and Appellate Practice," Etc.

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PREFACE.

Heretofore no attempt has been made to provide a ready reference hand book for practical and general use by the attorney for corporations. The corporate officer or stockholder usually calls upon his attorney for advice and service upon some plain matter of business. Only in rare instances does it relate to a complicated or doubtful question of law. Usually some well established principle is involved, some proposition upon which the authorities are all one way and which only has to be stated or brought to the attorney's attention to satisfy him of its correctness. Appreciating this fact the writer of the present work, himself the author of an elaborate treatise on the law of private corporations, has, upon reflection, and further investigation in all cases of doubt, embodied herein only the fundamental principles of corporation law stated in their simplest form with explicit direction as to corporate management and the transaction of corporate business, with citations of only leading cases and authorities sufficient to show the soundness of the doctrines herein laid down. In connection with this, he presents a great number of forms. No matter of corporate business is likely to come before the lawyer for which a complete or easily adaptable form is not found in this work. This method of treatment will best serve the purposes of the lawyer until a tangled matter of business arises which must be unravelled in court. Then he may have to carefully investigate other authorities, in order to point out fine distinctions, adopting the technical verbiage of the law. When this

necessity arises he will resort to other and more elaborate treatises and to the reports of decisions; because this work does not purport to be a complete elucidation of corporation law, which would necessarily fill several large volumes. In other words it is meant as a work of ready reference in the course of everyday corporation business. In this sense and for this purpose, its usefulness will be as highly appreciated by the lawyer who has on his shelves one or more of the great works on corporation law as by the lawyer who only occasionally has a case involving the law of corporations and whose particular duties as attorney for corporate enterprises and corporate officers is to give advice with respect to mere matters of management. Great care has been taken to state legal propositions, which are borne out by authority and to present forms which have stood the test of judicial scrutiny.

T. CARL SPELLING.

August 1st, 1904.

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Manual of Corporate Management.

CHAPTER 1.

Definition and Outline.

1. Definition.
2. Components.
3. Individuality of Corporate Existence—Limitations upon Corporate Powers.
4. Kinds or Classes of Corporations.
5. Creating and Organizing the Corporation.
6. Who May Incorporate.
7. As to a Corporation Holding Stock of Other Corporations.

§ 1. Definition.

There is a popular conception of a corporation distinct from its strict legal definition. The non-professional citizen seldom distinguishes the group of persons and property interests constituting the perceptible and easily designated components from that invisible entity which lawyers recognize as the real corporation.

The legal profession all agree that it is purely a creation of law, with certain rights in common with individuals, and others that are distinctive, all of which must be held and exercised to carry out the purposes for which it was created. No concise definition can improve upon that of Chief Justice Marshall, namely, that a corporation is "an artificial being, invisible, intangible, and existing only in contemplation of law."[1]

A full and complete definition of a corporation cannot be well understood without discussing all its rights,

powers, duties and relations, and the legal and equitable principles which control it in all its parts and functions, and their operation.

Corporations and joint stock associations have certain features in common. Both have stock-holders and boards of directors. But since a joint stock company is not incorporated, it is not a distinct entity. It is a mere limited copartnership. Its existence is in no sense derived from the State, but solely from the agreement among the members.

§ 2. Components.

And yet it is difficult for even the non-professional mind to conceive of a corporation existing for any practical purpose without:

(1) Continuous succession by a corporate name during the period specified in the act of incorporation;

(2) The right to purchase, hold and convey lands, to acquire and dispose of personal property, and to contract obligations;

(3) The right to sue, and the liability to be sued;

(4) The power to make rules and regulations, called By-Laws, for the government of the members and its business;

(5) The power to appoint and remove officers and agents;

(6) Loss of existing, and acquisition of new members.

Formerly the possession and use of a common seal was recognized among the essential components; but, while a seal is useful and convenient, its use is not usually considered vital to the validity of any corporate act.

§ 3. Individuality of Corporate Existence.—Limitations Upon Corporate Powers.

The individualty of the corporation, apart from its membership, is so distinct that two corporations may have identically the same directors—even the same members or stock-holders; and where two corporations, through their boards of directors, make a contract with each other, the directors who are common to both are not within the rule that one who acts in a fiduciary capacity cannot deal with himself in his individual capacity. Two corporations have the right, within the scope of their chartered powers, to deal with each other, notwithstanding the fact that some or all the directors are common to both.[2]

Ordinarily, a corporation may only purchase and hold so much real estate as may be necessary to the transaction of its business, yet if organized, as under such general authority it may be, for the specific purpose, alone, or among others, of purchasing, holding and selling land, its power in that direction is unlimited.

Among the incidental but qualified powers of all corporations is that of buying and selling the shares of other corporations. As to some corporations, such power is almost essential to the carrying out of their objects and transaction of their regular business—for instance banking and investment and many trading companies.

§ 4. Kinds or Classes of Corporations.

Within the broadest conception of the term, the State is a corporation; and from sovereignty to the lowest form, there may be, and are, corporations of

many degrees of importance, possessing powers of varying magnitude. It is impossible to conceive of any practicable and legitimate object of life the accomplishment of which may not be made the subject matter of incorporation, no statutory limitation forbidding.

These corporations which have to do with the government of the people, such as counties, cities and towns, are municipal corporations. Those devoted to the administration of charities in various forms, such as churches and schools giving free education, are designated as benevolent (formerly elemosynary) corportions. The latter kind of corporation is often conducted and governed in many respects as are corporations for profit, sometimes called business corporations. But while due attention will be given to other kinds, special consideration will be given in the following pages to corporations for profit.

§ 5. Creating and Organizing the Corporation.

In practice there is usually a preliminary agreement among those who contemplate the formation of a corporation with respect to the name of the corporation, its class, purposes, amount, division and apportionment of capital stock and officers. The mutual understanding may even go into other details, all of which is often reduced to writing. Such agreements are not binding—perhaps it would be more correct to say, are non-enforceable—prior to the consummation of the proceeding by signing and filing articles. The defect consists in the absence of the State's participation, it being a necessary party to the compact. Until the articles are filed and an organization effected there

is no corporation in existence, nor any person, artificial or otherwise, having capacity to enforce the agreement.

§ 6. Who May Incorporate.

The incorporators must be natural persons, acting in their own right, and capable of signing the articles and appearing in person before an officer and acknowledging the same. Moreover they must be persons capable of entering into contractual obligations. This would exclude copartnerships, unincorporated associations, persons of unsound mind and minors.

There is no limit to the number who may sign the articles, but there must be at least a number equal to the minimum of directors to be designated according to the statute, since, almost invariably, the law requires directors to be stock-holders, where it is to be a business company, and members where the association is to be for purposes other than for profit.

§ 7. As to a Corporation Holding Stock of Other Corporations.

For a private corporation to hold stock in another was contrary to the common law, and is still against public policy as declared by the common law, in the absence of statutory authority in some form. Where corporations are created by special Act, which is nothing other than the grant of a charter, such power should be expressly conferred therein. A general law authorizing corporations to be created "for any purpose for which individuals may lawfully associate themselves" does not alone confer the power. Unless the power be necessarily incident to those expressly claimed, it should be claimed and set forth as one of the purposes

in the articles of incorporation. Whether the purchase by a corporation of shares in another corporation is beyond its powers, or a proper exercise thereof, depends upon the purpose for which it is made, and whether, under the circumstances, it is a reasonable or necessary means of carrying out corporate objects.[2]

Undoubtedly, a corporation belonging to neither of the classes above named, setting forth the usual purposes as such in its articles, could not legally devote its entire capital to dealing in stocks. When the question is brought before the courts, they will judge in each instance whether there has been a reasonable and legitimate exercise of an incidental power, or a diversion of corporate funds. It is not to be understood, however, that a corporation chartered for the purpose, or created for that purpose, expressed in its articles, may not deal in stocks exclusively. And there can be no objection to a corporation being so formed under a statute providing that corporations may be formed for any purpose for which individuals may lawfully associate themselves. Whether a corporation belonging to a class which is authorized by statute to consolidate with another or others of the same class may bring about a consolidation by purchasing the stock of the corporations with which it is proposed to consolidate depends much upon statutes of the States where the question arises, and the construction given them by the courts.[4]

[1] Dartmouth College v. Woodward, 4 Wheaton 518,636.

[2] Coe v. East, etc., Ry. Co., 52 Fed. R. 543; San Diego, etc., R. R. Co. v. Pacific Beach Co., 112 Cal. 53; Pauly v. Pauly, 107 Cal. 8; Jesup v. Illinois Central Ry. Co., 43 Fed. R. 483.

[3] Hill v. Nisbet, 100 Ind. 341.

[4] See Market Street Ry. Co. v. Hellman, 109 Cal. 571; In re Rochester, etc, Ry. Co., 45 Hun 126; Terhune v. Potts, 47 N. J. L. 218; Terhune v. Midland R. R. Co., 38 N. J. Eq. 423.

CHAPTER II.

Essentials of Instruments by Which Corporation Is Created.

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20. Statutory Requirements as to Contents of Articles.
21. Peculiarities of Certain States.

8. Explanation of Terms.

The meaning of the term "Charter" has undergone a change, or rather it would be more proper to say that it is used in a double sense, in recent years. Where the term is applied to the instrument by which the corporation is initiated under general laws, it is scarcely appropriate.

The word "charter" technically means an instrument conferring, not asking or claiming authority. But this misuse of the term is so frequent under general incorporation laws that its changed meaning has come to be pretty well understood. Charters were formerly granted by the king. Later, they were granted by Acts of Legislation, a separate Act being passed for each charter. Such is still the method in a few of the States and in most foreign countries. But the constitutions of most of the States now require that, where possible, the legislature shall pass general acts, whereby, by simply filing a prescribed instrument, persons may form a corporation without application to the legislature at all. Such general statutes prescribe the contents of the instrument to be filed, and require that it shall set forth the powers to be exercised by the corporation. When so formed, the instrument and the general laws under which it is filed may be aptly designated as the "charter" of the corporation.[1]

The grant of a charter by legislative act, to persons named as incorporators, does not of itself create a corporate body. It must be shown, either by the Act itself or by other proof, that the incorporators applied for the charter, or afterwards accepted it, and an acceptance must be shown to have taken place within the State granting the charter. But acceptance in a formal manner is not required. Acceptance is sufficiently shown by user under it.[2]

There is not only a popular misuse of the term "charter" by the public generally, but it is often used by lawyers and law writers interchangeably with articles of incorporation. The former, as before explained,

really signifies a special legislative Act of Incorporation, while the latter describes the instrument by which incorporators express their acceptance of the benefits of a general incorporation law.

The word "trustee" is sometimes used indiscriminately with "director" to denote a member of the managing board of a corporation. So the word "member" is frequently used where "stockholder" or "shareholder" is the proper term. The former is the more general, and is the only proper term to designate those who compose a corporation having no capital stock. But, while stockholders, often called "shareholders," of capitalized corporations are in reality members thereof, the exclusive use of the term stockholder to describe them prevents confusion.

The term "constating instruments" is a convenient and appropriate term for the designation of all such writings as define the purposes, limit the powers and control the officers, agents and stockholders or members of the corporation, such as charter or Articles and By-Laws.

§ 9. Of the Articles of Incorporation of Corporations for Profit.

The era of general incorporation laws, now generally prevailing, is modern. Formerly, all corporations were created by special Acts of legislation, called, the Charter. They are still so created within a few States; but these constitute exceptions to the general rule. In nearly all the States are found general laws, upon compliance with which a corporation immediately comes into existence and into possession of all such powers enumerated in such laws as the incorporators choose

to claim. The instrument filed with the proper officer in which the incorporators embody their purposes and desires is designated "Articles of Incorporation." (For brevity the term "articles" will be hereinafter often used, having the same meaning.

There is but little difference as to the form, whether the articles are to be those of a corporation of great magnitude or a small business company. The forms here usually given are those of ordinary business corporations, and actual names, purposes, etc., are given, where practicable, for the reason that it is easier for the person using them to change the terms than to understandingly fill in the blanks.

Form 1.—Articles of Incorporation of Railroad Company.

.....

KNOW ALL MEN BY THESE PRESENTS:

That we, E. P. Jones, M. L. Bennett, Asa Roberts, James Willard, and A. J. Knox, citizens of the United States and residents of the State of ....., have this day voluntarily associated ourselves together for the purpose of incorporating under the laws of the State of ....., and in the manner prescribed in the Civil Code of said State, a corporation, and we do hereby certify:

First.—That the name of said corporation shall be The Excelsior and Air Line Railway Company;

Second.—That the purposes for which said corporation is formed, are: To purchase, construct, maintain, operate and conduct a railroad, of standard guage, in the State of ....., to be operated by steam, electricity or any other motive power, for the carrying of passengers and freight thereon and thereover for hire, with all the necessary tracks, side-tracks spur-tracks and equipments for the same, also, to construct, purchase, own and maintain a public and private telegraph and tele-

phone line, or either of such lines, along the line of said proposed railroad, with the same termini as said railroad, and to operate the same and the business thereof; and to lease said telegraph and telephone lines, or either of them, or other persons or individuals, or to contract with other persons or individuals for the construction, operation and maintainance thereof, or of either thereof, or for either such construction, operation or maintainance of said telegraph and telephone lines, or either of them; and to buy, build, maintain, operate, run, and conduct steam-boats and ferry-boats for the transportation of passengers and freight, and to carry on a general express business in connection with the operation of said railroad; and to have and exercise such other powers as any railroad company may be allowed by law to exercise at present or in the future; with full power to issue its stock in accordance with its by-laws and the laws of the State of .....; and to borrow money and issue bonds upon its road and property; and, in connection with said railroad and steam-boats, to run and operate vessels and barges, with full power to purchase and build wharves, docks and landings, and to buy or otherwise acquire all real estate necessary and proper for the exercise of the powers of said corporation; and, to purchase, construct, own or lease warehouses, station buildings, engine-houses, coal-chutes, machine and car-shops as may be deemed necessary for the carrying on of the business of said Company and the business of a common carrier; and to obtain and receive gifts of real and personal property, and subscriptions towards the building of its road; and to purchase, construct, own, maintain and operate, in conjunction with said railroad, such branch and side lines and railroads between said railroad and such points as the Board of Directors of said company may from time to time determine to be necessary for the business of said road.

Third.—The said railroad is to be constructed from the City of Excelsior, or some point on the Bay of ....., or the waters discharging into it, in the State of ....., generally eastwardly and southwardly by a practicable route

to a point in the vicinity of the City of Shoreham, in the County of ....., in said State; together with a branch line extending from said railroad at a point in ..... County, known as Gundlach, in a southeasterly direction through the County of ..... to Smithtown, and thence into and through the County of ..... in a southerly direction to Jonesborough, and thence in a southwesterly direction in said County through and into and through the County of ..... to the town of Portsmouth, where said branch is to connect again with the said line of railroad, all in the State of .....

Fourth.—That the estimated length of said railroad is 350 miles and that the estimated length of said telegraph and said telephone line is 350 miles; and that the estimated length of said branch line from Gundlach, by way of Jonesborough to Portsmouth, is 68.6 miles, and that the estimated length of telegraph and telephone line along said branch lines of railroad, is 68.6 miles.

Fifth.—That the place where the principal business of said corporation is to be transacted is the City of Excelsior, in the State of .....

Sixth.—That the term for which said corporation is to exist is ninety-nine (99) years.

Seventh.—That the number of Directors of said corporation shall be eleven (11), and the names and residences of those who are appointed for the first year are:

Name.	Residence.		
E. P. Jones.....	Excelsior, ...	County,	State of.....
M. L. Bennett.....	Excelsior, ...	County,	State of.....
Asa Roberts.....	Excelsior, ...	County,	State of.....
James Willard.....	Excelsior, ...	County,	State of.....
A. J. Knox.....	Excelsior, ...	County,	State of.....
Geo. D. Hendlershot.	Gundlach, ...	County,	State of.....
S. P. Quay.....	Shoreham, ...	County,	State of.....
Oscar T. Gray.....	Shoreham, ...	County,	State of.....
August Heinze.....	Belton, ...	County,	State of.....
Saml. Goldstone.....	Smithtown.....	County,	State of.....
D. Maginnis.....	Portsmouth,.....	County,	State of.....

Eighth.—That the capital stock of said corporation shall be six million dollars ($6,000,000), divided into sixty thousand (60,000) shares, of the par value of one hundred dollars ($100) each.

Ninth.—That the amount of the capital stock actually subscribed is the sum of one million seven hundred and forty-six thousand five hundred dollars ($1,746,500), and the same has been subscribed by the following persons, and in the amounts set opposite their names respectively, to wit:

Name.	Number of Shares.	Amount Subscribed.
E. P. Jones.....	5,000	$500,000

(Here insert other subscriptions.)

Tenth.—That before the filing of these Articles of Incorporation there was actually subscribed to the capital stock of said Company, for each mile of railroad intended to be constructed or purchased by said corporation, the sum of one thousand dollars ($1,000), and there has been paid for the benefit of the corporation to the Safe and Security Bank, a corporation, as Treasurer elected by the subscribers, ten (10) per cent. of the amount subscribed.

Eleventh.—That before the filing of these Articles of Incorporation, there was actually subscribed to the capital stock of said Company, for each mile of said telegraph and telephone line intended to be constructed or purchased by said corporation, the additional sum of one hundred dollars ($100), and there has been paid for the benefit of the corporation to the Safe and Security Bank, a corporation, as Treasurer elected by the subscribers, ten (10) per cent. of the amount subscribed.

In Witness Whereof, we have hereunto set our hands and seals, this twenty-fifth day of February, in the year of our Lord, one thousand nine hundred and four.

E. P. JONES, (Seal.)
M. L. BENNETT, (Seal.)
ASA ROBERTS, (Seal.)
JAMES WILLARD, (Seal.)

(Here follows acknowledgment.)

State of .....

County of .....

Joseph Jenkins, being first duly sworn on oath, says: That he is the duly elected, qualified and acting President of the Safe and Security Bank, a corporation, which has been elected Treasurer by the subscribers of the stock of The Excelsior and Air Line Railroad Company, mentioned in the foregoing Articles of Incorporation, and that the required amount of the capital stock thereof, to wit: One thousand dollars ($1,000) per mile, for each mile of railroad, has been actually subscribed, and ten (10) per cent. thereof, viz.: more than the sum of seventy-five thousand dollars actually paid to the said corporation, the Safe and Security Bank, as Treasurer for the benefit of the corporation, The Excelsior and Air Line Railway Company, and that an additional ten (10) per cent. thereof, viz.: more than the sum of twenty-five thousand dollars actually paid to the said corporation, the Safe and Security Bank, as Treasurer for the benefit of said corporation, The Excelsior and Air Line Railway Company.

JOSEPH JENKINS.

Subscribed and sworn to before me, this 25th day of February, A. D. 1904.

GEO. M. GUNDERSON,

(Seal.) Notary Public,

In and for the County of .....

State of .....

.....

§ 10. Articles Must Be Properly Authenticated and Filed.

In all States having general incorporation laws, the instrument of incorporation, whether designated articles or otherwise, must be properly authenticated before presentation for filing. Such authentication is usually required to consist in acknowledgement before a duly

authorized officer. A failure to acknowledge the articles is a fatal defect, and does not estop one of the incorporators from denying the validity of the incorporation, though the certificate of the Secretary of State recite that the articles were duly acknowledged. But it is not necessary that the acknowledgement of articles should show that the incorporators were personally known to the acknowledging officer to be such, unless a statute expressly requires it. Obviously, where the statute prescribes filing of articles with a designated officer as a step in the proceeding to incorporate such articles would be without force or effect unless properly filed. Nor would recording them and the issuance of a certificate by the same, or another officer, cure the irregularity.

The legal fees for filing and recording should always be paid or tendered, unless waived. The consequences of a failure of officers to perform their proper functions herein are not visited upon the incorporators if the fees are paid or tendered. But without such payment or tender, public officers owe no duty in the premises. The fees for filing with the Secretary of State, or other designated State officer, vary greatly in the several States, and are usually graded according to the amount of capital stock.

§ 11. Articles of Incorporation of Benevolent, or Non-profitable Corporations.

The articles of a social, benevolent, and other non-profitable corporation, down to the certificate of organization, are the same in general form as in corporations organized for profit. About the only difference between

them with respect to form is that the articles of the former do not contain a list of subscribers to stock. A certificate of organization prior to the filing of the articles is required of social, benevolent, and other non-profitable corporations. Both the articles proper, duly signed and acknowledged, and the certificate duly verified, are necessary to the valid creation of corporations other than for profit. And where the articles of a lodge were otherwise sufficient, and the certificate was in due form and properly verified, but the articles were never signed, it was held that no corporation had been created in legal contemplation.[3]

Under statutes requiring verification, the same must be by affidavit of the officers conducting the election. The law does not provide any other form of verification.[4]

Form 2.—Articles of Incorporation of Benevolent Society.

.....

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, members of a benevolent society, do hereby, in accordance with the rules of such society and under and by virtue of the laws of the State of ....., incorporate ourselves and form a Corporation as follows, to wit:

First.—That the name of this Corporation is the "American Hebrew Relief Society."

Second.—That this Corporation is formed for charitable and benevolent purposes, and especially—

(a) The accumulation of a fund for the relief of sick and destitute persons and other charitable purposes connected and commensurate with the aims and objects of the society.

(b) To cultivate social intercourse among its members and assist in improving and ameliorating the moral and social condition of its beneficiaries.

(c) To purchase and own such real estate and other property as may be necessary for the purposes of the Society.

(d) For the purposes above specified, to receive donations; to receive, manage, take and hold real and personal property, by gift, grant, devise or bequest.

Pecuniary profit is not the object of this corporation.

Third.—That the term for which said Corporation shall exist is ..... years.

Fourth.—That the place where its principal place of business shall be transacted shall be in the City of ..... State of .....

Fifth.—The number of Directors or Trustees shall be nine (9). The names and residences of those who are appointed and elected for the first year and until the election and qualification of their successors, are :

(Insert names and places of residence.)

Sixth.—That there is no Capital Stock and there are no shares of Stock.

Seventh.—That an election of said Directors or Trustees was held in the City of ....., State of ....., on the 15th day of March, 1904, and the majority of the members of this Society were present and voted at such election. The persons above named were duly elected Directors or Trustees for the first year and until the election and qualification of their successors. Samuel Blum and Jacob Mayer were the President and Secretary, respectively, of said meeting and the officers conducting the said election.

State of .....
County of.....

Samuel Blum and Jacob Mayer, being first duly sworn, each for himself, deposes and says, that he has read the foregoing statement as to the election of Directors or Trus-

tees of this corporation, and the same is true in each and every particular.

SAMUEL BLUM.
JACOB MAYER.

Subscribed and sworn to before me, this 20th day of March, 1904,

ABRAHAM STEIN,
Notary Public, in and for the County of .....
State of .....

In Witness Whereof, we have hereunto set our hands and seals on this 20th day of March, in the year of our Lord one thousand nine hundred and and four, at the City of....., County of ....., State of .....

(Names of Incorporators.)

.....

§ 12. Articles of Co-Operative Association.

Relaxations of the rule that corporations for profit must have a capital stock divided into shares are found in some of the States. These relaxations are a concession to a disposition to co-operate in business for social advantage as well as profit. Where such laws exist the following form will prove useful as a guide:

.....

Form 3.—Articles of Incorporation of a Co-Operative Association.

.....

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of .....

AND WE HEREBY CERTIFY.

First.—That the name of the corporation shall be the Advance Co-operative Bakery.

Second.—That the purposes for which it is formed are to buy, sell, engage in, conduct and carry on the business of a wholesale or retail bakery, or both, and to engage in and carry on a general merchandise and mercantile business and to buy and sell goods, wares and merchandise, and to buy, hold and own such real property as may be necessary for the proper conduct of its business, and to hold, own, buy, sell, mortgage and convey real and personal property, and to conduct and operate the said business in such manner as will conduce to the economic and intellectual elevation of the working people, and in accordance with the provisions of the Civil Code (or statutes) of the State of ....., for the incorporation and operation of co-operative business corporations and associations. And to further conduct and carry on said business for the promotion of the industrial interests of the members of said association.

Third.—That the place where the principal business of said corporation is to be transacted is in the City of ..... in the County of ....., in the State of .....

Fourth.—That the term for which said corporation is to exist is ..... years from and after the date of incorporation.

Fifth.—That the number of directors of said corporation shall be seven (7), and that the names and residences of those elected for the first year are as follows, to wit:

Names.	Residences.
(Insert names.)	(Insert places of residence.)

Sixth.—That the amount which each member of said association is to pay, upon admission as a membership fee, is the sum of five dollars ($5.00); that each of the above named persons, and each person signing these Articles has actually paid in said sum of five dollars ($5.00) to said association; that the interest and right of each member in said association is to be equal.

In Witness Whereof, we have hereunto set our hands and seals this 15th day of March, 1904.

(Signatures.)

State of .....
County of..... } ss

On this 15th day of March, A. D. one thousand nine hundred and four, before me, Adam Beadle, a Notary Public in and for said County, personally appeared (names), known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Authentication Whereof, I have hereunto affixed my signature and seal of office, at said County, the day and year last above written.

ADAM BEADLE,
(Notarial Seal.) Notary Public in and for the County of ....., State of .....

.....

§ 13. Parts of Articles Separately Considered—General Declaration of Intention.

The form by which the general intention to form a corporation is expressed is not a matter of special importance. The solemn form, "Know all men by these presents, that we, the undersigned, do hereby," etc., is most frequently employed; but "We, the undersigned, do hereby," is equally effective. But it is of some importance that the intention to form a corporation rather than a joint stock association be expressed. The latter is in legal effect a mere co-partnership, formed under legal authority, and distinguishable from an ordinary partnership by the fact that it uses a corporate name and issues stock to its members. Such issue of stock is a convenient method of providing clear evidence of the exact interest of each member, but the members are liable for the debts of the association to the same extent

as in an ordinary partnership. Sometimes the class or general character of the company is designated in the opening part, for instance, "A corporation to engage in the transportation of freight and passengers by rail," or "A trading corporation;" but such designation is superfluous. The corporation is classified and derives its character from the words used in setting forth its purposes.

§14. Parts of Articles Separately Considered.—I. The Name of the Incorporation.

The importance of the name may vary according to whether the question is viewed from a legal or a practical standpoint. It has been well said that "The name is an indispensable part of the constitution of every corporation, the knot of its combination, as it has been called, without which it cannot perform its corporate functions."[5] A wrong or misleading name would not limit or enlarge the powers of the corporation. To determine these, the clause expressing the purposes, and other parts of the articles must be considered. But it is obvious that a misleading name would prejudice the corporate enterprise from the standpoint of business, and might be an obstacle to its success, and require frequent explanation, notwithstanding that the second clause fully expressed the true purpose.

Aside from the common-law exclusive right to a trade name, the adoption of a name identical with that of any other corporation created in the same State, or so similar thereto as to deceive the public, the selection of a name is left entirely to the volition of the incorporators. A limitation upon the right to select a name

is sometimes found in statutes. The safer course, where there is any uncertainty as to a conflict, would be to communicate the proposed name to the Secretary of State, or other official having charge of articles which have been filed, accompanied with an inquiry as to whether there would be a conflict.

The grounds upon which the courts afford relief against the infringment of a corporate name is the injury to the party aggrieved, and the imposition upon the public, by causing them to believe that the goods of one man or firm are the production of another. The existence of these consequences does not necessarily depend upon the question whether a fraudulent or an evil intent exists.[6] The courts interfere in such cases, not on the ground that the State may not affix such corporate names as it may elect to the entities it creates, but to prevent fraud, actual or constructive.[7]

§ 15. Parts of Articles Separately Considered.—II. The Purpose for Which It Is Formed.

If the question of the statement of purposes were fully elaborated, much space would be consumed which had best be devoted to other matters. Upon the wording of this part of the articles may depend the success or failure of the corporate scheme. Numerous are the purposes for which business corporations may be formed, and varied the phraseology in which the purposes may be expressed.

The extent of powers, not only of the board of directors but of the corporation itself, must be determined by reference to that clause in the articles expressing the purposes, in connection with a consideration of the

general character of the corporation, or class to which it belongs. It is well to consider in this connection that the enumeration of certain powers in articles excludes all others. Nevertheless, those which are necessarily implied are as much contained and granted as those which are expressed, the general rule being that the enumeration of powers in the charter or articles confers those and such others as are fairly implied, but none that are not included upon a fair and reasonable construction. Courts and lawyers very properly distinguish between implied and incidental powers.

Of such exceptional importance is a clear, concise and full statement of the purpose, or purposes, that several exemplars are subjoined:

Form 4.—Of a Trading Company.

.....

That the purposes for which said corporation is formed are, the engaging in and carrying on of a general mercantile and commission business in the City of ....., State of ....., and elsewhere; the buying, selling, leasing and hiring of real estate in the State of ..... and elsewhere; the purchasing, holding and selling of the stock of other corporations, and such other purposes as may be incidental to the engaging in and carrying on of such mercantile and commission business.

.....

Form 5.—Of a Dry Goods Company.

.....

That the purpose for which it is formed is to purchase and acquire the good-will, stock and business now carried on and conducted by the firm of John Doe & Co., and to carry on and conduct said business and to carry on a general whole-

sale and retail business in goods, wares and merchandise of all kinds and nature whatsoever useful and ornamental, and more particularly to carry on the business of importing and manufacturing, buying and selling dry goods, fancy goods, cloaks, suits, curtains, and goods, wares and merchandise appertaining and relating to the dry goods and fancy goods business, and to make, manufacture, buy and sell cloaks, suits, and other articles of wearing apparel, and to do and transact everything necessary, proper and beneficial in carrying out any of the foregoing named objects, and also to acquire, sell, lease, rent, hire and hypothecate real estate and to make assignments of leases and contracts and to transfer and assign leases and contracts when and where necessary and incident to said business.

.....

Form 6.—Buying, Improving, Cultivating, and Selling Farming Lands.

.....

That said corporation is formed for the purpose of buying that certain farm known as the Fulton tract of land, situate near ....., in ..... County, in the State of ....., and cultivating and improving the same, and conducting thereon the general business of farming, stock raising, growing and curing fruits, grapes and other products, making wine and selling such products; and, when sufficiently improved, that an adequate price can be obtained therefor, selling said farm in one body or in small subdivisions.

.....

Form 7.—Comprehensive and Concise.

.....

That the purposes for which said corporation is formed and framed are :

1. To purchase, own, improve, sell, lease and deal in real

property of every description ; to buy, sell, own, hold and deal in personal property of all kinds ;

2. To purchase, own, sell and deal in shares of stock, bonds and obligations of public and private corporations ;

3. To purchase, own, sell, operate and develop mines and mining claims and gold-bearing veins and lodes, and to carry on and conduct the mining and milling business in all its branches ;

4. To lend money ;

5. To buy, sell and deal in merchandise of all kinds ;

6. To charter, construct, own, lease, and operate steam and other craft and vessels ;

7. To do and perform all other acts or things necessary or incidental to purposes hereinabove set forth.

.....

Form 8.—General Business, Comprehensive and Elaborate.

.....

That the objects and purposes for which this corporation is formed, are :

(a) The carrying on of a Banking business in all its branches; also for receiving deposits of money and loaning the same; also for the purposes of purchasing, taking, owning and holding real and personal property, improving, selling, leasing and dealing in the same, and for the purposes of leasing and hiring all kinds of real and personal property from others within the United States, Mexico and the British possessions, or wheresoever else it may acquire such rights and possessions.

(b) Also for the purposes of building and constructing all kinds of public and private buildings and doing a general contracting and building business.

(c) Also for the purpose of buying and selling, taking, owning and holding and dealing in shares of stock in this and other corporations, bonds, mortgages, pledges, choses in action, judgments, rights of way, water works, water rights,

easements, inventions, trade marks, patents, patent rights, licenses, privileges, oil asphalt, gas, electric or other lines for the transmission of light or power.

(d) Also to sell, pledge, mortgage or hypothecate any of its properties for the purpose of securing any indebtedness it may contract and to make, execute and deliver all instruments in connection therewith and to do all such other acts and things as shall be necessary in the transaction of its business.

(e) Also to maintain and carry on a general real estate, commission, and auctioneering business, to act as agent, trustee, broker, or in other capacities in the making and negotiating of loans upon real estate or personal property, stocks, bonds, and other securities of all kinds.

(f) Also for the purpose of loaning money with or without security, and for taking all kinds of mortgages, pledges and securities of real or personal property to secure loans made by it; and to use all lawful means for the collection of money due it.

(g) Also for the purpose of carrying on and transacting any and all kinds of business in which natural persons may lawfully engage.

.....

Form 9.—Purchase and Development of Oil Land and Other Business.

.....

That the purposes for which it is formed are :

1. To buy and otherwise acquire, to hold and own, manage, operate, improve, develop and sell lands, mining claims, mineral rights, oil wells, and other real estate and interests and rights in and to any of said properties :

2. To engage in and carry on the business of drilling and exploring for oil, producting, refining, distilling, treating, manufacturing, piping, carrying, handling, storing, dealing in, buying and selling oils, petroleum, natural gas, asphaltum, bitumen, bituminous rock, and other mineral and

hydro-carbon substances, and products of all other substances; and for such purpose to buy and otherwise acquire, hold, own, manage, and operate refineries, pipe lines, tanks, manufactories, machinery, tank-cars and other works, property and appliances that may be incident or auxiliary to said business, or that may be deemed necessary or convenient by the Board of Directors;

3. Also to take and acquire by purchase, exchange, or other lawful modes, and to hold, own, sell and otherwise dispose of the capital stock and bonds of other corporations;

4. Also to establish agencies, offices, storage tanks and houses, and to sell articles and products manufactured by itself, or other persons or corporation, in ..... and other States or Territories of the United States of America, and in foreign countries.

.....

Form 10.—Purchase, Development and Sale of Mineral Lands, Water Rights, and Other Business.

.....

That the purposes for which it is formed are:

First.—To acquire in any part of the world by purchase, condemnation, exchange, location, appropriation, or in any other manner whatsoever, or in any manner whatever, to receive, own, hold, use, operate, lease, supply, mortgage, sell, or otherwise dispose of, in any part of the world, mines, mining property, ores, deposits of mineral, rock, earth, water, water-rights, power, light, reservoirs, canals, flumes, ditches, pipes, tunnels, aqueducts, dams, sites, rights of way, or other easements, mills, smelters, or other machinery, saw-mills, stores, hotels, boarding-houses, vessels, tramways, or any other kind of property.

Second.—To contribute in any manner to the expense of promoting, constructing, improving or maintaining in any part of the world any works of any kind whatsoever, however owned, which, in the judgment of its Board of Directors for the time being, may be calculated, directly or indirect-

ly, to advance the interests of the Company; and to buy or otherwise acquire, hold, guarantee, pledge or contract with reference to, or otherwise dispose of, in any manner, the shares, bonds,obligations or other securities of this or of other corporations, or of individuals ;

Third.—To promote, maintain, do, perform, execute, acquire, own, hold or dispose of each, all or anything incidental to, or necessary, convenient or proper, in the judgment of the Board of Directors for the time being, to carry out or perform any of the matters, things or purposes aforesaid, or incidental thereto, or connected therewith, or to exercise or acquire any rights, franchises or privileges which may be deemed necessary, requisite, useful, convenient, incidental or auxiliary to any of the purposes, objects or things herein or that in the judgment of its Board of Directors for the time being may tend to advance the interests of the Company, directly or indirectly ;

Fourth.—To do such business of whatever nature, or in such places, in any part of the world, as the Corporation's Board of Directors for the time being, may, from time to time, by By-Laws, Resolutions, or otherwise, determine.

.....

Form 11.—To Purchase, Lease, Operate, etc., Street Railways—Brief and Comprehensive.

.....

That the purposes for which it is formed, are as follows: namely : To purchase, acquire, construct, lease, hire, rent, own, control, operate and maintain street railroads in, along and upon the streets, avenues, alleys, highways, roads and lands within the corporate limits of the City of ....., in the State of ..... and the County of ....., in the State of ....., and to let, demise and lease the same to persons or corporations.

The kind of railroads to be purchased, acquired, constructed, leased, hired, rented, owned, operated and maintained

by said corporation are double and single track street railroads, with all necessary switches, side tracks, turn-outs, turn-tables, and terminal accommodations; and said railroads are to be operated by animals, or by wire cables and stationary engines, or by locomotive engines, or by electricity, or by all or any and every such means, or by such other means as science or discovery or invention may provide and the law sanction.

The place from and to which said railroad and branches are to run are within the City of ....., in the State of ..... and the County of ....., in the State of .....

.....

Form 12.—To Purchase, Take Over and Operate Properties of Electric, Gas and Railway Companies, etc.

.....

That the purposes for which it is formed are quasi public, to wit: To acquire by purchase, or otherwise, all of the property, rights, privileges and franchises, of every kind and nature whatsoever, of the Excelsior Electric Power, Gas and Railway Company, a corporation organized and existing under the laws of the State of ....., and of the Windom Electric Power and Light Company, a corporation organized and existing under the laws of the State of .....; and thereafter to own all of said property, rights, privileges and franchises, and to use and enjoy the same according to the nature thereof, respectively:

To construct canals on the banks of the Swift River, near the City of Excelsior, in ..... County, to be used for water power, manufacturing, mechanical, irrigation, mining and domestic purposes, and all such other beneficial uses and purposes, as the said canals may be useful for, at any point in ..... County, or elsewhere, in the State of ..... to which the water of said canals may be taken or conducted, and, to aid and further said purposes, to acquire by purchase

or otherwise, all lands, waters, water rights and franchises, and all the dams and canals and other works and improvements, and all contracts for labor, as well as all other properties, or things in action, which may be of use or benefit in carrying out the afore-mentioned purposes;

To acquire, hold, manage and operate canals, reservoirs, dams, ditches, flumes, aqueducts, pipes, water and water rights, electric lines, machinery, factories and other property for the purpose of generating and transmitting electricity, electric energy and electric light, heat, power and other uses;

To acquire, hold, manage and operate buildings, tanks, machinery, pipes and pipe lines, and any and all other appliances, for manufacturing, producing and distributing gas, and any and all other illuminant products, for light, heat, power, and any and all other beneficial uses and purposes to which they may be applied;

To supply such power to mines, quarries, railroads, street railroads, tramways, mills and factories; to supply such light, heat, gas and illuminant products, to mines, quarries, mills, factories, incorporated cities, cities and counties, villages and towns, and to the inhabitants thereof, or to any other useful purpose;

To acquire, maintain and operate street railroads in the City of Excelsior, County of ....., over, along and upon certain streets in said City, as set out in ordinances adopted by the Board of Trustees of said City; and also to acquire, maintain and operate other street railroads in said City of Excelsior and elsewhere, for which franchises may be obtained by this corporation, either by direct grant or by purchase or otherwise;

To acquire by purchase, or otherwise, from any person, firm or corporation, property, rights, privileges and franchises that may be deemed of value to this corporation in carrying out or in connection with, any or all of the objects for which this corporation is formed, as hereinbefore set forth;

To acquire and own any and all real estate that may be necessary or useful in carrying out the objects for which this corporation is formed, as hereinbefore set forth;

To incur indebtedness in such amount as may be deemed necessary or proper; to evidence such indebtedness by the bonds or other written obligations of this corporation; and to secure the payment of such indebtedness by mortgage, deed or trust, or other form of incumbrance of and upon all or any part of the property, rights, privileges and franchises of this corporation, whether acquired at the time of making such incumbrance, or thereafter to be acquired;

To sell or lease any of the property that may be acquired by the corporation, and to lease similar property from others; to make trade or traffic arrangements with other persons, firms or corporations for any purpose that may be desirable or profitable to this corporation;

To buy and sell shares of stock of any corporation engaged in business similar to that of this corporation, and to buy and sell the mortgage bonds of any such corporation engaged in similar business.

.....

Form 13.—Purpose of a Co-operative Merchants' Association.

.....

Second:—That the objects for which said corporation is formed are:

To consider and secure such legislation as will be of benefit to the community.

To urge and assist the proper authorities in the enforcement of all just laws and regulations governing municipalities without fear or favor. To advocate the repavement of streets, new sewers, schoolhouses, parks and children's playgrounds, and the adoption of such other measures as will add to the comfort of residents and the beautification and attractiveness of the City of ..... To originate and secure the adoption of such measures as will attract visitors to this City and State, and add to their safety and convenience. To encourage the development of the resources of the City and State, and to induce and co-operate in the location of new mercantile and

manufacturing enterprises. To give reliable information to the members as to the financial standing and reliability of patrons applying for credit. To assist employers in securing reliable employes, and to protect members against frauds of every description. To secure for members the lowest advertising rates, and to advise them as to the circulation and reliability of newspapers and advertising propositions. To aid members and the mercantile interests of the City in general in the promotion of trade and recommending such regulations as may be deemed expedient in furthering their several interests. To furnish members with legal advice on matters pertaining to their business interests.

.....

Form 14.—Purposes of a Sporting or Gun Club.

.....

Second:—That the purposes and objects for which said corporation is formed are to promote and encourage all kinds of field and athletic sports; to promote and encourage the sport, pleasure, exercise and recreation of its members; to promote and encourage the proper and reasonable protection of all kinds of wild game and fish; to arrange, promote and conduct shooting contests; to acquire and maintain game preserves for the use, benefit and enjoyment of its members; to secure by lease, purchase or otherwise the right and privilege to hunt, shoot and fish on such game preserves; to hold, purchase and acquire, buy and sell, lease, mortgage and hypothecate real and personal property; to erect buildings or other structures necessary and proper for the carrying out of the purposes before mentioned; to borrow and loan money and to do any and all other things whatsoever which may be requisite, necessary and proper in and about the carrying out of the purposes and objects for which this corporation is formed.

.....

For the most comprehensive purposes imaginable, including almost every line of business for profit, and

sanctioned by the liberal provisions of New Jersey law, see Form 22.

The purposes of non-profitable corporations are governed by the same laws as those of corporations organized for profit. For articles of benevolent and co-operative corporations, see Forms 2 and 3.

Form 15.—Mutual Aid, Etc.

.....

That the purposes for which it is formed are mutual, benevolent purposes and providing for funeral expenses and for sick benefits of the members of the Corporation and association and for those members in distress financially.

.....

Form 16.—Sociability, Benevolent Aid, Etc.

.....

That the purposes for which it is formed are to promote sociability and friendship amongst its members, to manage and conduct entertainments, excursions and social meetings of its members, and for such purposes to hold, lease or purchase real property; and to enter into all contracts necessary in conducting its affairs, and to render such benevolent aid and comfort to its members as may be provided by its by-laws; also to receive, hold and divide amongst its members the cemetery or burying lots of said Society.

.....

Form 17.—Promotion of Principles of Political Party.

.....

That the purpose for which said Corporation is framed is to promulgate the principles and promote the welfare and success of the political party known as the ..... party in the State of .....

(b) To organize and institute branches of said organization and grant charters and dispensations of the same.

(c) To purchase, hold, lease and hire real estate and personal property and to sell and dispose of the same; to build, erect, maintain, lease and hire halls, buildings and places for meetings and generally to do such other things as may be conducive to the purposes aforesaid.

.....

§ 16. Parts of Articles Separately Considered.—III. The Place Where Its Principal Business Is to Be Transacted.

It is a practically uniform requirement of general laws, and sometimes a constitutional requirement, that every corporation shall maintain a principal office, or place of business, within the State of its creation. It is often provided that, having such principal office, the corporation may establish and maintain places of business outside the State. There are, however, no legal or other obstacles to this being done in the absence of such provisions. It is the usual practice of corporations doing interstate and international business.

§ 17. Parts of Articles Separately Considered.—IV. The Term for Which It Is to Exist.

In the cases of special charters granted without limitation as to duration of the corporations created thereby, the duration of existence is perpetual.[8] The same rule would probably be held to apply to corporations created under general laws if the latter were silent on the subject of a term of existence. But such acts, as a rule, fix the maximum term, some at twenty, others at fifty, and still others at ninety-nine years. In

a few of the States, one of which is New Jersey, a corporation may claim in its articles, and enjoy, perpetual existence. The same is true of New York.

§ 18. Parts of Articles Separately Considered.—V. The Number of Its Directors, or Trustees, and the Names and Residences of Those Appointed for the First Year.

The number of the directors is usually fixed in the articles, though this rule is not universal. In New Jersey the number is fixed in the by-laws. General incorporation laws usually fix the maximum, as well as the minimum number of directors which may be provided for. Such is not the rule in New York and New Jersey, however. In New York the minimum is three, there being no maximum. In New Jersey, where as was just stated, the number may be fixed in the by-laws, the number may not be less than three. There is no maximum. Further as to directors, see Chapter 12.

§ 19. Parts of Articles Separately Considered.—VI. If There Be a Capital Stock, the Amount Subscribed and by Whom.

A statement of the amount of the capital stock, if the corporation is to do business for profit, is an indispensable part of the articles, as is also a statement of the number of shares into which it is to be divided. The capital stock is a substitute for individual liability, and a failure to provide for it, while not resulting in the creation of a corporation, might cause the abortive attempt to create one to result in a co-partnership. Further as to capital stock, see Chapter 7.

§ 20. Statutory Requirements As to Contents of Articles Further Considered.

Where statutes attempt to prescribe the essentials of the articles, the duty to comply with the statutory mandate cannot be evaded. A substantial compliance, however, will be sufficient. An entire omission of any of them will be fatal to the existence of the corporation, when attacked by a proper proceeding. Such statutes sometimes set forth the essential parts in numbered clauses. A different order than that prescribed would not affect the validity of the articles, though it would be always best to follow the statutory order.

The usual order, however, is as follows: (1) The name of the incorporation; (2) The purpose for which it is formed; (3) The place where its principal business is to be transacted; (4) The term for which it is to exist; (5) The number of its directors or trustees which shall not be less than .... nor more than ....., and the names and residences of those who are appointed for the first year; (6) The amount of its capital stock, and the number of shares into which it is divided; (7) If there is a capital stock the amount actually subscribed, and by whom. In addition to these, other statements are often required to be contained in articles incorporating certain classes of corporations. These generally relate to the advance payment of a certain percentage of the capital stock, etc.

In a few states, the designation of the directors for the first year is not required; otherwise there is but little variation from the above order and requirement in states having general incorporation laws.

Considerable skill and knowledge is required in the

preparation of articles; and one not well informed in corporation law should not assume the responsiblity of preparing them if the corporate enterprise is of any value. The draftsman should be able to determine to a certainty the class into which the proposed corporation falls, under the provisions of the general law. Still more important is the selection of apt words with which to set forth the objects to be accomplished, and pointing out the manner of accomplishing them.

Mere irregularities in the proceedings to form a corporation are not allowed to invalidate the subsequent exercise of powers as a corporation by the body thus formed; or as the courts express it, "The corporate existence cannot be questioned collaterally if the statutes authorizing the corporate formation have been substantially complied with, although some of the acts required to be performed may have been imperfectly performed, or omitted altogether." [9]

§ 21. Peculiarities of Certain States.

The procedure to organize corporations in Illinois and a few other States are somewhat peculiar, and therefore require special mention.

In Illinois, organizers, not less than three nor more than seven, are required to state the name, object, capital, number of shares, location of principal office of the corporation, duration (not to be over ninety-nine years), and to sign and acknowledge the same, sending it to the Secretary of State. That officer issues a license to the commissioners to open a subscription. No provision is made by statute as to the amount of cash capital to begin a business; but when the required

amount of capital stock is subscribed a meeting of the subscribers is called upon ten days' notice for the purpose of organizing. The commissioners are required to file with the Secretary of State a sworn report of the proceedings at such meeting, in so far as it relates to the election of directors. That officer thereupon issues a certificate which must be recorded in the county where the corporation is to have its principal office. A certificate of election of directors must accompany the sworn report. These instruments may be in the following forms:

Form 18.—Certificate of Electing Directors of the New Era Printing Company (Illinois.)

.....

(Adapted from "Am. Corp. Leg. Manual" for 1904.)

I, J. F. Weston, Secretary of the New Era Printing Company, a body corporate existing under and by virtue of the laws of the State of Illinois, and located at Chicago, in the County of Cook in said State, do hereby certify that at a regular meeting of said corporation, held at its rooms, 400 and 401 Necleus Building, in the said City, County and State on the 1st day of March, 1904, the following named persons were by the said corporation duly elected directors thereof for the term as herein stated.

E. P. Jones for the term of one year;
M. L. Bennett for the term of two years;
James Willard for the term of three years;

and until their successors are elected.

Witness my hand and the seal of said corporation this March 10th, 1904.

(Corporate Seal.) J. F. WESTON,
Secretary.

.....

Form 19.—Petition for Incorporation (Illinois.)

.....

State of Illinois, }
County of Cook. } ss.

To Hon. J. Smith, Secretary of the State:

The undersigned, E. P. Jones, M. L. Bennett and James Willard propose to form a corporation under the laws of the State of Illinois, and for the purpose of such organization, we hereby state as follows, to wit:

1. The name of such proposed corporation is New Era Printing Company.

2. The object for which it is to be formed is to do a general printing and publishing business, and all things incidental and necessary thereto.

3. The Capital Stock shall be One Hundred Thousand Dollars.

4. The amount of each share is one hundred dollars.

5. The number of shares shall be one thousand.

6. The location of the principal office is to be in the City of Chicago, in the County of Cook, State of Illinois.

7. The duration of the corporation shall be ninety-nine years.

E. P. JONES.
M. L. BENNETT,
JAMES WILLARD.

State of Illinois, }
County of Cook. } ss.

I, J. Brown, County Clerk of the County of Cook, State of Ilinois, hereby certify that E. P. Jones, M. L. Bennett and James Willard, personally known to me to be the same persons whose names are subscribed to the foregoing statement, appeared before me this day in person, and severally acknowledged that they and each of them severally signed, sealed and delivered the same statement as the free and voluntary act of

each of them respectively, for the uses and purposes therein set forth.

Witness my hand and official seal this the 15th day of March, 1904.

(Seal.) J. BROWN,
County Clerk.

(Adapted from American Legal Manual for 1904.)

.....

The instrument by which a corporation is created under New York laws is called the "Certificate of Incorporation." It differs in no material respect from articles of incorporation filed in other States, unless the incorporators desire to insert special features, for instance, a provision for the issuance of preferred stock. The certificate may also contain any other provisions limiting or enlarging the powers of the board of directors and officers, or regulating the business and management of the corporation. Incoporators may claim in the certificate, and the corporation may enjoy, either a limited or perpetual existence. The following forms vill be found easily adaptable:

Form 20.—Articles of Incorporation of the Unity Commercial Trading Company.

.....

We, the undersigned, desiring to form a Stock Corporation, pursuant to the provisions of the Business Corporations Law, of the State of New York, all being of full age, two-thirds being citizens of the United States, and at least one of us a resident of the State of New York, do hereby certify as follows:

First:—The name of the proposed corporation is "Unity Commercial Company."

Second:—The purpose for which it is proposed to be

formed are (Here specify the purposes. Business corporations in New York may be formed "for any lawful business purpose or purposes other than a monied corporation or a corporation provided for by the banking, the insurance, the railroad and the transportation corporation laws." Laws, 1892, Ch. 691, and Laws, 1895, Ch. 671; Laws 1896, Ch. 360 and 460.)

Third:—The amount and description of the capital stock is to be one hundred thousand dollars ($100,000). (The certificate may provide for preferred stock, the manner and extent of preference to be here specified as well as the amounts respectively of the preferred and common stock. See S. C. L., Sec. 47.)

Fourth:—The number of shares of which the capital stock shall consist is one thousand (1,000) shares, of the par value of one hundred dollars ($100); and the amount of capital with which said corporation will begin business is fifty thousand dollars ($50,000).

Fifth:—The location of its principal business office is to be in the City of New York, in the County of New York and State of New York.

Sixth:—Its duration is to be unlimited in duration (or the number of years may be stated if it is desired to limit the period).

Seventh:—The number of its directors is to be five.

Eighth:—The names and postoffice addresses of the directors for the first year are as follows:

Names.	Postoffice Addresses.
E. P. Jones	Georgetown, D. C.
M. L. Bennett	Newark, N. J.
Asa Roberts	London, Eng.
James Willard	Brooklyn, N. Y.
A. J. Knox	San Francisco, Cal.

Ninth:—The names and postoffice addresses of the subscribers of this certificate and the number of shares of stock which each agrees to take in said corporation are as follows:

Names.	P. O. Addresses.	No. of Shares.
E. P. Jones	Georgetown, D. C.	20
M. L. Bennett	Newark, N. J.	50
Asa Roberts	London, Eng.,	400
James Willard	Brooklyn, N. Y.	15
A. J. Knox	San Francisco, Cal.	15

Tenth:—(Here may be inserted any limitations upon the powers of the Board of Directors and officers and provisions regulating the management of business.)

In witness whereof we have made, signed, acknowledged and filed this certificate in duplicate, this May 1st, 1904.

(SIGNATURES.)

(Acknowledgement.)

(The above form found substantially in "Am. Corp. Leg. Manual" for 1903.)

.....

Form 21.—Another Authorized by New York Statutes.

.....

State of New York,
City of New York, } ss.
County of New York.

We, ORLANDO J. SMITH, of the CITY OF BROOKLYN, PAUL WILCOX and MARGARET H. WILCOX of the City of New York, do by these presents, pursuant to and in conformity with the Act of the Legislature of the State of New York, passed on the seventeenth day of February, one thousand eight hundred and forty-eight, entitled "An Act to authorize the formation of Corporations for Manufacturing, Mining, Mechanical or Chemical purposes," and the several acts of the said Legislature amendatory thereof, associate ourselves together, and form a Company under the name and style of AMERICAN PRESS ASSOCIATION and the following are hereby declared to be

The corporate name of the said Company.

The objects for which the Company is formed.

The amount of the Capital Stock of the said Company.

The number of shares of which the said Capital Stock of the Company shall consist.

The term of existence of the Company.

The number of Trustees and their names.

The names of those who shall manage the concern of the said Company for the first year.

The names of the Town and County in which the operations of the said Company are to be carried on.

1. The corporate name of the said Company is hereby declared to be AMERICAN PRESS ASSOCIATION.

2. The objects for which the Company is formed are as follows: Receiving, obtaining, collecting and accumulating items and matters of news, and selling, vending, furnishing and supplying the same, in sterotype and electrotype plates manufactured by said AMERICAN PRESS ASSOCIATION for supplying such news.

3. The Capital Stock of the said Company shall be One Thousand Dollars, which shall be divided into Ten Shares of One Hundred Dollars each.

4. The said Company shall commence on the first day of February in the year one thousand eight hundred and eighty six and shall continue in existence for the term of fifty years.

5. The number of Trustees shall be Three.

Their names are: Orlando J. Smith, Paul Wilcox and Margaret Wilcox.

The names of those who shall manage the concerns of the said Company for the first year, are:

ORLANDO J. SMITH, PAUL WILCOX and MARGARET WILCOX.

6. The name of the Town and County in which the operations of the said Company are to be carried on:

New York City, in the State of New York; Chicago, in the State of Illinois; Cincinnati, in the State of Ohio; Boston,

in the State of Massachusetts, and such other cities as may hereafter be decided upon.

Witness our hands and seals, this 28th day of January, 1886.

PAUL WILCOX, (Seal.)
MARGARET H. WILCOX, (Seal.)
ORLANDO J. SMITH, (Seal).

State of New York,
City of New York, ss.
County of New York.

On the 28th day of January, in the year one thousand eight hundred and eighty-six, before me personally came ORLANDO J. SMITH, PAUL WILCOX and MARGARET WILCOX, to me known, and known to me to be the individuals described in, and who executed the foregoing instrument, and they each and severally acknowledged that they executed the same.

(SEAL.) FRANK W. ELY,
Commr. of Deeds,
N. Y. City & Co.

.....

New Jersey has more liberal laws for the formation of corporations than any other State in the Union. It would be difficult to specify any legitimate and moral mundane power that a corporation may not claim in its articles and exercise under the laws of that State. Nor is there any limit to the period of corporate existence, if claimed in the articles. It is not therfore strange that many incorporators have taken advantage of the provisions of New Jersey statutes. The form of the articles is somewhat peculiar. The following exemplar is taken from "The American Corporation Legal Manual for 1903," except the data:

Form 22.—Certificate of Incorporation of the Century Industrial and Commercial Company.

.....

This is to certify that we, E. P. Jones, M. L. Bennett, Asa Roberts, James Willard and A. J. Knox, do hereby associate ourselves into a corporation, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act concerning corporations (Revision of 1896)." and the several supplements thereto, and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

First:—The name of the corporation is Century Industrial and Commercial Company.

Second:—The location of the principal office in this State is at No. .... street, in the City of .... in the County of ..... The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is John Doe.

Third:—The objects for which this corporation is formed are as follows:

1. To develop and improve coal, iron, copper, gold, silver, oil and all other kinds of mining lands and claims, and to purchase, own, hold, lease, sell and convey the same.

2. To manufacture, buy, sell and deal in and with all kinds of metals, as well as the products of which they, or any of them, is a constitutent; also, to manufacture, prepare for market, transport, import, export, deal in, and with any article or product, or article, in the manufacture, or composition of which metal of any kind or character is an adjunct or factor, hereby intending to acquire by purchase or manufacture, or otherwise, all supplies and materials and articles necessary or convenient for use in connection with and in accomplishing the objects above mentioned, and every part thereof.

3. To build, repair, maintain, acquire by purchase or otherwise, and operate gas or electric works, tunnels, bridges, viaducts, canals, wharves, piers and machines and mechanical contrivances of all kinds and descriptions, and, in other States,

territories, districts, colonies and countries than the State of New Jersey, to construct, purchase, maintain, operate, sell, dispose of, and lease all kinds of railroads, and parts of railroads, as well as any other works of internal improvement or public utility.

And, in furtherance but not in limitation of the powers conferred by the aforesaid acts and laws of the State of New Jersey, or of the objects hereinabove stated, it is hereby expressly provided that said corporation shall also have and exercise the following powers, that is to say:

(a) To do any and all the things herein specified as objects, purposes and powers, to the same extent, and with like force and effect, as a natural person might, or could do the same, and so do them in any part of the world as principal, agent, contractor, trustee or otherwise.

(b) To conduct said businesses above specified in all its branches and ramifications, and have and maintain one or more offices for the transaction of its business, and hold without limit, purchase and convey, real and personal property, both within and without the said State of New Jersey, that is is to say, in the State of New Jersey and in all other States, Territories and colonies of the United States, and in all foreign countries and places.

(c) To manufacture, purchase, or otherwise acquire, own, sell, assign, or otherwise transfer and convey, trade, deal in and with, goods, wares, merchandise and property of every class, variety and description, whether produced by said corporation or other corporations or persons.

(d) To purchase for the purpose of holding, occupying and using the same, or to be leased or sold for profit, or given away, or donated, and to otherwise acquire, hold, own, maintain, work, improve, mine, develop, sell, convey, or otherwise dispose of without limit as to value, price, quality, area, or environment, both within and without the State of New Jersey, and within or without any city, town, village, hamlet, and in any part of the world, real estate and real property, and any and all interests and rights therein.

(e) To acquire by purchase or otherwise, the good will,

trade marks, trade names, and all other rights and interests in or pertaining to any business whatever, and to conduct, control and manage the same, and to assume, entirely or in part, the payment of the debts and liabilities of any person, firm, association, or corporation, and to pay for the properties, assets and rights of any such person, firm, association, or corporation in cash, stock of this corporation, or with its bonds, or with the stocks or bonds of other corporations, persons, firms, or associations, or with other property, or otherwise.

(f) To discover and make inventions and institute and carry through to final decision proceedings for letters patent on inventions of said corporation or of others; to apply for, obtain, register, purchase, lease, or otherwise acquire and hold, own, use, operate, introduce and sell, assign, or otherwise dispose of, any and all trade marks, trade names, licenses and concessions, and all inventions, improvements and processes used in connection with, or secured under Letters Patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account, any such trademarks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and with a view to the working and development of the same, to carry on any business, whether mining, manufacturing, or otherwise, which said corporation may think calculated, directly or indirectly, to effectuate and accomplish these purposes.

(g) To hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of, shares of the capital stock, bonds, or other evidences of indebtedness created by any other corporation, or corporations, and while the holder of such stock, to exercise all the rights and privileges of ownership, including the right to vote thereon to the same extent as a natural person might or could do.

(h) To purchase, lease, exchange, hire, or otherwise acquire, any and all rights, privileges, pursuits, or franchises suitable or convenient for any of the purposes of the business hereinbefore or hereinafter mentioned or specified; to erect or construct, make, improve, or aid or subscribe towards the con-

struction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, houses for employes and others, and works of all kinds and descriptions; and in connection with and in furtherance of the general business, objects and purposes of said corporation, as herein described, to construct, lease, own, operate, or sell a railroad or railroads, or both, in any State or country other than the State of New Jersey, subject to the laws of such other State or country, either directly or through the ownership of stock of a corporation formed or to be formed for the purpose, under the laws of such other State or country.

(i) To guarantee the payment of the principal or the dividends or interest on any shares, stocks, debentures, or other securities issued by, or any other contract or obligation of, any corporation, whenever proper or necessary for this business, this corporation, or any part thereof, as herein mentioned and specified in the opinion of its Board of Directors, or the Executive Committee thereof.

(j) To make, enter into and execute contracts of every kind and character, sealed and unsealed, with individuals, firms, associations and corporations, private, public and municipal, and bodies politic, and with the government of the United States, and of any State or Territory, or colony or district thereof, and with any foreign country.

(k) To do each and every thing necessary, suitable, or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive or expedient for the protection or benefit of this corporation, either as holders of or interested in any property, and in general to carry on any manufacturing, mercantile, mining, transportation, or other business, it being the intention that the objects, purposes and powers specified, and the clauses contained in this third paragraph of this instrument shall, except where otherwise expressed therein, be in no wise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this instrument, but that the objects, purposes and powers specified in each of the clauses of this

third paragraph shall be regarded as independent objects, purposes and powers.

Fourth:—The total authorized capital stock of this corporation is thirty million dollars ($30,000,000), divided into three hundred thousand (300,000) shares of a par value of one hundred dollars ($100) each. Of such total authorized capital stock one hundred thousand (100,000) shares, amounting to ten million dollars ($10,000,000), shall be preferred stock, and two hundred thousand (200,000) shares, amounting to twenty million dollars ($20,000,000), shall be common stock.

From time to time, the preferred stock and common stock shall be issued in such amounts and proportion as shall be determined by the Board of Directors and as may be permitted by law.

The PREFERRED STOCK shall be entitled, out of any and all surplus net profits, whenever declared by the Board of Directors, to non-cumulative dividends at the rate of, but not exceeding, seven per cent per annum for the fiscal year beginning on the first day of July,1905, and for each and every fiscal year thereafter, payable in preference and priority to any payment of any dividend on the common stock for such fiscal year. In addition thereto, in the event of the dissolution of this corporation, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares out of the surplus funds of the corporation, before anything shall be paid therefrom to the holders of the common stock.

The COMMON STOCK shall be subject to the prior rights of the holders of the preferred stock as herein declared. If, after providing for the payment of full dividends for any fiscal year on the preferred stock, there shall remain any surplus net profits of such year, any and all such surplus net profits of such year, and of any other fiscal year for which full dividends shall have been paid on the preferred stock, shall be applicable to dividends upon the common stock, when and as, from time to time, the same shall be declared by the board of directors; and out of any such surplus net profits, after the close of any fiscal year, the Board of Directors may pay dividends upon the common stock of this corporation for such fis-

cal year, but not until after the dividends upon the preferred stock for such fiscal year shall have been actually paid or provided and set apart.

Fifth:—The names and postoffice addresses of the incorporators, and the number of shares subscribed for by each, the aggregate of which ($900,000) is the amount of capital stock with which this corporation will commence business, are as follows:

Names	P. O. Addresses.	No. of Shares.
E. P. Jones	Newark, N. J.	3,000 (preferred)
M. L. Bennett	Georgetown, D. C.	1,500 (common)
Asa Roberts	London, Eng.	1,500 (common)
James Willard	Camden, N. J.	1,500 (common)

Sixth:—The period of existence of this corporation is unlimited.

Seventh:—This corporation may use and apply its surplus earnings or accumulated profits, authorized by law to be reserved, to the purchase or acquisition of property, instead of distributing them as dividends.

This corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number. The number of directors may be increased at any time by vote of a majority of the Board of Directors upon written consent of holders of two-thirds of the preferred stock and like consent of the holders of two-thirds of the common stock. The Board of Directors shall have power, without the assent of the stockholders, to make, alter, amend and rescind the by-laws, to fix the amount to be reserved as working capital, to authorize, and to cause to be executed mortgages upon the property of this corporation, or any part thereof, and to make any and all contracts which are within the powers of this corporation.

In witness whereof we have hereunto set our hands and seals the first day of May, 1904.

(SIGNATURES AND SEALS.)

(Acknowledgements.)

.....

In several States, the articles, as filed, are required to show prior organization of the corporation, even where formed for profit. For the purposes of such showing, a certificate, duly verified, must be appended to the articles, showing the proceedings taken to organize, much as in the case of benevolent and other non-profitable corporations in other States. The following form is usual in Arkansas, and may be accepted as an exemplar for other States making the same exaction:

.....

Form 23.—Articles of Agreement and Incorporation of the New Era Printing Co.

.....

Know all men by these presents, that the corporators hereinafter named have this day and by these presents formed an incorporation under and in pursuance of the laws of the State of Arkansas, in that behalf provided for "Incorporations for manufacturing and other lawful business," and in evidence thereof do hereby execute the following articles of incorporation:

First, the name of said corporation shall be New Era Printing Company.

Second, the incorporators are E. P. Jones, M. L. Bennett, Asa Roberts, James Willard and A. J. Knox.

Third, the place of business is to be located at the City of Little Rock, in said State, and its office for the transaction of business shall be in said city, or at such other place as the Board of Directors may select.

Fourth, the general nature of the business proposed to be transacted by said corporation is a general printing and publishing business.

Fifth, the amount of capital stock of said corporation shall be one hundred thousand dollars ($100,000), of which fifty thousand dollars ($50,000) has been subscribed by the incorpor-

ators aforesaid, and the residue thereof may be issued and disposed of as the Board of Directors may from time to time order and direct.

Sixth, the said capital stock shall be divided into one thousand (1,000) shares of the face value of one hundred dollars ($100) each.

Seventh, the affairs and business of said corporation shall be conducted and controlled by a Board of Directors, consisting of five (5) members, all of whom shall be stockholders. Said Board of Directors shall elect one of its members as president and one of its members as vice-president, and shall also elect a secretary and treasurer.

Eighth, the first election for directors shall be held immediately after the organization of the corporation, and said directors shall serve for one year, and until their successors are elected.

Ninth, the Board of Directors are empowered to ordain and establish all by-laws and regulations necessary to the management and business of said corporatons, and alter and repeal the same at pleasure.

Tenth, the first meeting of the said incorporators for organization shall be held in the City of Little Rock, and at the office of E. P. Jones, 101 Main street, at ten o'clock a. m., on the 2d day of February, 1904. The subscribers hereto hereby waive notice of said meeting.

In testimony whereof we have hereunto set our hands on ths, the 25th day of January, 1904.
(Signature and Acknowledgement.)

CERTIFICATE OF INCORPORATION AND ORGANIZATION.

Whereas, E. P. Jones, M. L. Bennett, Asa Roberts, James Willard and A. J. Knox have associated themselves together as a body politic and corporate, to be known as the New Era Printing Company; and whereas, the said incorporators, being the subscribers to the capital stock of the said corporation,

have waived the fifteen days' notice as required by law and called a meeting for organization, to be held on the 2d day of February, 1904, at ten o'clock a. m., at the office of E. P. Jones, 101 Main street, in the City of Little Rock, State of Arkansas; and whereas, at the time and place above mentioned, a meeting of the aforesaid subscribers was held to organize said corporation and elect five (5) directors; and whereas, at said meeting the followers subscribers for capital stock of said corporation were elected, to wit: E. P. Jones, M. L. Bennett, Asa Roberts, James Willard, and A. J. Knox; and whereas, at a meeting of said Board of Directors, James Willard was elected president, and Asa Roberts was elected vice-president, and J. F. Weston was elected secretary, and A. J. Knox was elected treasurer:

Now, therefore, the said James Willard, president, and the said Jones, Bennett, Roberts, Willard and Knox as directors, do, in pursuance of the law, issue this, their certificate, verified by their oaths, and do certify as follows: First, that said corporation is formed for the purpose of doing a general printing and publishing business; second, that its capital stock is one hundred thousand dollars ($100,000), divided into one thousand shares of one hundred dollars ($100) each; third, that fifty thousand dollars ($50,000) of said capital stock have been actually paid in by the subscribers hereto; fourth, that the names of the stockholders and the number of shares owned by them respectively is as follows:

Names.	No. of Shares.
E. P. Jones	20
M. L. Bennett	50
Asa Roberts	400
James Willard	15
A. J. Knox	15

In witness whereof the said James Willard, president of the said corporation, and a majority of the Board of Directors of said corporation, have hereunto set their

hands on this, the 10th day of February, 1904.

JAMES WILLARD,
President.

E. P. JONES,
M. L. BENNETT,
ASA ROBERTS,
JAMES WILLARD,
A. J. KNOX,
Directors.

(Verification, Official Jurat and Seal.)

(Adapted from form found in "Am. Corp. Leg. Manual" for 1903.)

.....

In a few of the States the articles are required to make divers specifications as to when the corporate existence is to begin and terminate, the maximum of corporate indebtedness that may be contracted, the manner of conducting the business, the power of the directors to appoint agents, etc. The exemplar of such States which follows is from Nebraska:

.....

Form 24.—Articles of Incorporation of the New Era Printing Company.

.....

Be it known that we, the undersigned, E. P. Jones, M. L. Bennett, Asa Roberts, James Willard and A. J. Knox, do hereby, in pursuance of the statutes of the State of Nebraska, in such cases made and provided, associate ourselves in business as a body corporate, in the manner and for the purpose hereinafter mentioned:

1. Said corporation shall be named and known as New Era Printing Company.

2. The principal place of transacting the business of said

corporation shall be in the City of Omaha, County of ...., State of Nebraska.

3. The general nature of the business to be transacted by said corporation shal be a general printing and publishing business; and for such purpose said corporation may purchase, own, lease, sell and convey such real estate as may be necessary or incident to the proper conducting of said business, and to sublet and lease any property of said corporation, and may do and perform such other acts and things as may be incident and necessary to the main powers of said corporation. s

4. The amount of capital stock of the corporation authorized is the sum of one hundred thousand dollars ($100,000), divided into shares of one hundred dollars ($100) each. At least fifty thousand dollars ($50,000) thereof shall be subscribed, ten per cent of which subscription shall be fully paid up upon organization of the corporation, and fully paid shares of stock shall be issued for the amount so fully paid, and not otherwise.

5. The highest amount of indebtedness to which said corporation shall at any time subject itself shall not exceed fifty thousand dollars ($50,000).

6. The date of the commencement of the term of existence of said corporation shall be the first day of March, 1904, and the date of its termination shall be the twenty-eighth day of February, 1954.

7. The affairs and business of said corporation shall be conducted by a Board of Five (5) Directors, together with the officers of said corporation, as hereinafter specified. The Board of Directors shall be elected by the stockholders from among their own number.

8. The first meeting of the stockholders shall be held upon the day of the organization of said corporation, and thereafter the regular meetings shall be held at the office of said corporation in the said City of Omaha, on the first Monday in January of each and every year thereafter, at which said meeting the Board of Directors shall be elected, to hold office until the annual meeting next ensuing, and until their successors are elected and qualified. If any vacancy should

occur in said Board of Directors, the same may be filled by the remaining members of the board, such appointee to hold office until his successor is elected, as hereinbefore provided.

9. The directors shall, immediately upon the election, select from among their number a president and from among the stockholders a secretary, treasurer and general manager, who shall hold their respective offices until the next annual meeting after their election, or until their successors are elected, unless removed by the Board of Directors.

10. The Board of Directors may also appoint such other subordinate agents as in its judgment the business of the corporation may require. The office of secretary and treasurer, or the office of treasurer and general manager, may be filled by one and the same person.

11. At all stockholders' meetings, each share of stock shall be entitled to one vote, and the vote of a majority of the shares shall, in all cases, control. Stockholders may vote their stock in person or by proxy duly authorized in writing.

12. The Board of Directors shall have full power and authority to make all rules and by-laws for the proper government and control of the business affairs of said corporation, and may alter and amend the same at pleasure.

13. These articles of incorporation may be amended at any time. All amendments shall be first approved by the Board of Directors and ratified by a two-thirds vote of a general or called meeting of the stock-holders, and upon such ratification it shall become the duty of the directors of said corporation to subscribe, acknowledge, record and publish said amendments.

In witness whereof we have hereunto set our names this 2d day of February, 1904.

(Signatures.)

(Acknowledgements.)

(Adapted from "Am. Corp. Leg. Manual" for 1903.)

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[1] Demorest v. Flack, 128 N. Y. 205; Ameriscoggin Bridge v. Bragg, 11 N. H. 102; Talladega Ins. Co. v. Landers, 43 Ala. 115; Blandford School Dist. v. Gibbs, 56 Mass. 39; Penobscot

Boom Corp. v. Lamson, 16 Me. 224; Jameson v. People, 16 Ill. 257; Covington v. Covington, etc., Co., 10 Bush (Ky) 69.

[2] See People v. Chicago Gas. T. Co., 130 Ill. 268.

[3] People Ex rel, etc. v. Golden Gate Lodge, 128 Cal. 257.

[4] Wall v. Mines, 130 Cal. 27.

[5] Fort. etc. Assn. v. Model, etc., Assn., 159 Pa. St. 308.

[6] Holmes, etc., v. Holmes, etc., Co. 37 Conn. 278; See also Drummond Tobacco Co. v. Randle, 114 Ill. 412; Newby v. Oregon Centr. Ry. Co., Deady 609,616.

[7] Higgins Co. v. Higgins Soap Co., 144 N. Y. 462.

[8] Snell v. Chicago. 133 Ill. 413.

[9] Oroville v. Plumas County, 37 Cal. 354; Los Angeles Holiness Band v. Squires, 126 Cal. 545; and cases cited

CHAPTER III.

First Meeting of Stockholders and Annual Meetings.

22. Necessity of Organization.
23. Of the Notice.
24. Call and Waiver in Lieu of Formal Notice.
25. Waiver of Notice, Subsequent to Meeting.
26. How First Meeting Conducted.
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29. How Annual Meetings Conducted.—Limitations upon Powers Of.
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31. Voting Rights of Individual Members.
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41. Reports of Committees.
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44. New Business.
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§ 22. Necessity of Organization.

By organization of a stock company something different is meant than the filing and recording of articles and procurance of a certificate from the Sec-

retary of the State. When these steps have been taken an entity called a corporation exists merely in the abstract. To entitle this entity to public recognition, and to standing in the courts, as a legal person, its components, that is, its stockholders, must form a body of themselves. If the directors named in the articles for the first year never meet or act, no stock is ever issued, no stockholders, or persons who have signed the articles ever meet, or pretend to meet, as a corporate body; if no persons are ever appointed as officers, nor any records ever kept, then there is no such corporate existence as will authorize the exercise of any of the powers of a corporation.[1] And by the statutes of several States, it is required that something be done in addition to organizing. Business must be commenced in some way within a given period, usually one year. It is not required, however, that the business should be persistently and continuously prosecuted after being commenced. An illustration of this proposition is seen in the case of a gas company, where it was held that the purchasing of real estate for its plant, and the breaking of ground for its pipes, was a sufficient commencement of business to entitle it to sue, although no other business was done for several years.[2]

Organization requires a meeting, of which every person who has signed and acknowledged the articles must have had due notice. In most of the States are found provisions governing this meeting for purposes of organization.

While the corporation itself is a distinct legal entity from the persons composing it, yet we cannot conceive of a corporation being organized and put in working

shape for the business for which it was chartered without a concert of action by all those who, by signing the articles, have now become members or stockholders. Corporations having no capital stock are, as previously explained, usually required by statute to organize by the election of officers and adoption of by-laws prior to the filing of articles; but in most of the States it is otherwise with capital stock corporations, usually designated as corporations for profit.

§ 23. Of the Notice.

The by-laws usually designate the officer whose duty is to give notice of all meetings. But, even where they do not, it is a function pertaining to the office of Secretary, and in the absence of such a by-law, or any statutory provision on the subject, the notice must be given by the Secretary.[8]

For the regular annual, or a stated, meeting, some general form of notice is usually prescribed by statute. The provisions of such statutes are usually, and very properly embodied in the by-laws. But while it is undoubtedly sufficient to follow the method thus prescribed, it is better, and is a common practice, to give personal notice, by mail or otherwise, to each stockholder individually. This refreshes the memory of the stockholder as to the date and place of meeting. The notice should contain the date, time of day and place, and should state the nature of the business to be transacted. The last mentioned matter is not a legal requirement even in the general form of notice required by statute.

Any ordinary corporate business may be transacted

at a regular meeting though not specialized in the notice. But if any unusual business were to be transacted it would be especially desirable to have a full attendance of those interested in the corporate enterprise.

If the time of notice before the meeting be designated in the statute or by-laws, the notice should be given for at least the time designated; but it should not be given too long before the meeting, lest it be forgotten when the date of the meeting arrives. If it has been understood, or ordered at a previous meeting, that a meeting shall be noticed and held upon the happening of a certain event, notice that a meeting shall be held upon the happening of that event, without a further notice that the event has occurred, rendering the meeting necessary, is not sufficient to bind the stockholders by proceedings taken at a meeting so noticed and held.

If nothing unusual is proposed to be done at an annual stockholders' meeting, no mention need be made of the business to be transacted thereat in the notice, although such invention is often made in order to enlist the interest of the members and secure a large attendance.

Common forms of the personal and published notices respectively are as follows:

Form 25.—Personal Notice.

.....

Office of New Era Printing Company,
50 Printing House Square,
Washington, D. C., May 4, 1904.

To Mr. E. P. Jones:

Please take notice that the annual meeting of the stockholders of the New Era Printing Company will be held at the

office of said corporation, No. 50 Printing House Square, Washington, D. C., on the 15th day of May, 1904, at 10 o'clock a. m., for the election of directors, for the ensuing year, and the transaction of such other business as may come before the meeting. The transfer books will close at 5 o'clock p. m., May 5th, 1904, and remain closed until 10 o'clock a. m. May 16th, 1904.

Respectfully,

J. F. WESTON,
Secretary.

.....

Form 26.—Published Notice.

.....

New Era Printing Company:

The annual meeting of the stockholders of the New Era Printing Company will be held at the office of said corporation, No. 50 Printing House Square, in the City of Washington, D. C., on the 15th day of May, 1904, at 10 o'clock a. m., for the purpose of electing directors, and for the transaction of such other business as may be brought before said meeting. The stock transfer books will be closed at 5 o'clock p. m. of May 15th, and remain closed until 10 o'clock a. m., May 16th, 1904.

J. F. WESTON,
Secretary.

.....

§ 24. Call and Waiver in Lieu of Formal Notice.

In nearly every State, meetings of stockholders and directors are hedged about with statutory safeguards, with reference to timely notice, to prevent any possible fraud. But it is often to the interest of all parties that a meeting should be held sooner than would be possible if all these requirements were complied with, and at the

same time idle to suppose that the presence of every stockholder, or every director, can be procured upon shorter notice than that prescribed by law.

By the use of the following form, only the signatures of all the members entitled to attend and take part in a general meeting of the stockholders will render valid the proceedings of the meeting, though held without notice, even though a minority fail to attend.

Form 27.—New Era Printing Company. Call and Waiver Confined. First Meeting of Stockholders.

.....

The undersigned being all the incorporators and stockholders of the New Era Printing Company, hereby call the first meeting of the stockholders to be held at room 15, No. 50 Printing House Square, in the City of Washington, D. C., on the 1st day of March, 1904, at 10 o'clock a. m., for the organization of the Company and the transaction of all such business as may be incident thereto; and we hereby waive all requirements as to notice of such meeting and consent to the transaction thereat of any and all business which may come before said meeting.

Dated February 28th, 1904.

E. P. JONES,
JAMES WILLARD,
M. L. BENNETT,
ASA ROBERTS,
J. F. WESTON,

.....

The same form with slight change will suffice as a call and waiver for the annual, or any special stockholders' meeting.

§ 25. Waiver of Notice, Subsequent to Meeting.

The irregularity of a failure to give notice to an individual stockholder can be waived by ratification at a subsequent meeting, by voting to approve minutes reciting that he was present participating, and in other ways. Attendance at a regular meeting where only ordinary business is transacted, is a waiver of notice as to all such business. But mere attendance at a special meeting is not a waiver of notice as to unusual business, where the by-laws require that the business to be done shall be specified in the notice, or where a particular form and manner of notice is prescribed by statute. The right to object to irregularites in giving notice is personal, however, to each stockholder, so that one cannot object on the ground that another was not notified, where the latter has waived notice.

§ 26. How First Meeting Conducted.

The first, or organization meeting, is necessarily special, as at its date no by-laws have been adopted fixing a time for regular meetings. It is a meeting whose regularity and binding effect are dependent entirely upon a strict compliance with requirements governing special meetings, the most important of which are, notice to each and every incorporator, and a mention of purposes of the meeting in the call, or notice. It is also peculiar in this, that there being no prescribed order of business, the incorporators are left to their discretion as to how they will conduct the meeting.

While the business to be transacted at the first meeting is important, it is well understood among the incorporators to be so, and the proceedings are usually

devoid of friction or serious differences of opinion. The adoption of by-laws is the most important business to be attended to, and these are usually prepared in advance by general agreement among the incorporators, and are so framed as to best subserve and promote the corporate interests and carry out the common policy. Yet there are often matters of concern upon which it is desired that the board of directors shall take action to which their attention is called, or as to which they are instructed by motion or resolution.

The time within such a meeting should be called to order after assembling will depend largely upon the circumstances in each case. There should be no unreasonable delay, and yet sufficient time should evidently be given to enable the members to assemble. The meeting should not be delayed so long as to create the impression that no meeting is to be held and thus cause part of the stockholders to disperse. A measure cannot, after such unreasonable delay, be legally adopted which could not have been adopted but for the delay. This rule is equally applicable to all meetings.

The minutes of this meeting should show compliance with all statutory requirements and formalities. For forms of minutes and duties of the Secretary pertaining thereto, see Chapter 14.

In a few of the States, directors are not named in the charter, or articles, but are required to be elected at this first meeting. Where that is the case, the proceedings do not differ from those taken to elect at annual stockholders' meetings. See also Chapter 14.

A motion is the ordinary and most convenient form in which business is presented at a meeting, whether

of stockholders or of directors. The form of the motion is of no importance, so long as it correctly expresses the purpose of the movant. If the matter presented by the motion be at all complicated, it had best be presented in the form of a resolution. In some corporations, especially those organized for other purposes than for profit, all resolutions are required to be referred to a committee without debate. There, a motion would have an advantage over a resolution in this, that it would bring the matter directly before the meeting and permit of its being immediately discussed and disposed of, and that without taking the chances of an adverse report from the committee.

The movant should see that the secretary understands and properly records the substance of the motion. If the secretary is in doubt as to what the motion was, he should seek information from the movant. The latter, if he deem the matter important, should furnish the secretary with a written memorandum for the purpose.

It is not often that the affairs of the corporation are in such shape as to allow the transaction of business other than that provided by statute to be done at the first meeting. Nevertheless, there is no limitation upon the powers of the stockholders to then and there consider and act upon corporate matters, except as circumscribed by the terms of the charter or articles. All other business than that usually done at such meeting should be postponed, however, until after the adoption of a code of by-laws; and it would be better if it were postponed until after all the matters necessary to complete the organization were attended to.

§ 27. Resolutions.

A resolution is a formal method of presenting a proposition for the consideration of a deliberative assembly. The presentation of a resolution otherwise than in writing would be so unusual a procedure that it would scarcely be treated otherwise than with ridicule.

The secretary should always enter the name of the persons presenting a resolution. Resolutions range as to their length and scope all the way from a few words to several pages. If the subject be complicated, or the resolution concern a matter wherein legal conditions precedent or concurrent must be taken cognizance of, one or more "Whereases" followed by recitals of facts, may precede the resolution proper.

In other instances, the "whereases" constitute mere concrete arguments in support of the resolution, or resolutions.

The forms of resolutions at stockholders' meetings, hereinafter inserted with their appropriate headings, are self-explanatory, and may serve as a guide in the preparation of all other resolutions which it may be necessary to offer. (See Index under catchword "Resolutions" and the forms there referred to.)

§ 28. Authority and Power of Membership Assembled at Meetings.

While the members, or stockholders, in meeting assembled, are not the corporation, yet, as a directing and governing agency they are only limited in power over it by the charter or articles, and general laws. The term "corporate meeting" is often used to denote an

assembly of this supreme collective agency. While meetings of the boards of directors pertain directly and often vitally to the interests of the corporation, yet the board assembled constitute a collective agency inferior to a membership, or stockholders' meeting.

The usual business transacted at a corporate meeting relates to matters of fundamental interest, should promote the continuity of the organization and be directed to the successful prosecution of the main enterprise for which it was formed; such as the election of directors, increasing or diminishing capital stock, enactment, repeal or amendment of by-laws, amendment of charter or articles, winding up the affairs, dissolution, and such other acts as tend to shape the general policy and destiny of the corporation.

§ 29. How Annual Meetings Conducted—Limitations Upon Powers Of.

It has been previously shown (§ 22) that certain things are essential to be done at the first, or organization, meeting, and that special statutory requirements must be conformed to in calling it. As to subsequent meetings, so long as no mandatory provision of law, the articles, or by-laws, is violated, the stockholders may conduct them in any manner convenient and agreeable to themselves. No particular formalities are required, and slight irregularities are unimportant, provided the sense of the meeting be fairly expressed.

It is an implied condition in every contract of membership in a corporation organized for profit that a majority in point of stockholding interest, and in point of number in other corporations, shall control its operations and funds. This rule is subject, however, to the

limitation that no majority, however large, can misapply the funds, or direct the operations of the corporation beyond, or outside, the specified purposes or agreements of association, or in total disregard of the formalities prescribed by law, or the articles, so as to bind a dissenting minority, however small.

While the general law usually gives potential duration of life to the corporation for a fixed period, the same law, in nearly or quite all the States, prescribes a method of procedure by which corporations, at the volition of the stockholders, or members, may be dissolved, (see Chapter 24), or consolidated with another corporation (see Chapter 21). And where the charter or general law authorizes it, the majority, acting regularly and in good faith, may dissolve the corporation or consolidate it with another corporation, without the consent of the minority. It is only when the entire collective interest is ignored or disregarded, or where the majority, or the agents they have selected, pervert the corporate machinery to their individual interests, or to purposes and objects foreign to those for which the corporation was formed, that the minority have a right to complain on any ground upon which to base an appeal to the courts for redress. But where the power of the majority is thus perverted and abused, courts of equitable jurisdiction are essentially the minority stockholders' stronghold.

It is well settled that the majority have no right to dissolve the corporation otherwise than according to the procedure found in the statute. But if the corporation has become an unprofitable and failing

enterprise, the majority may undoubtedly make a sale of all the corporate property, either with a view to dissolution, or to an entire abandonment, without formal dissolution. (See Chapter 22.)

§ 30. What Constitutes a Majority.

It is not always necessary, in order that the acts done and resolutions passed at a corporate meeting may be binding, that all, or, in the absence of a provision to the contrary, even a majority of the members attend, and vote on the proposition. But the by-laws, pursuant to authority contained in statutes, may specify a number less than the majority necessary to constitute a quorum for the transaction of business. In the absence of any such provision, a majority of the members, or of stockholding interests, actually assemble at a properly called and convened meeting, constitute a quorum for the transaction of business, and a majority of that quorum have authority to represent and bind the corporation and all its members or stockholders. Of those assembled, it is not necessary that all shall vote. A majority of those actually voting can elect officers, or adopt any motion or resolution as effectually as in State and municipal elections. And all who absent themselves from a meeting called are presumed to assent to the expressed will of the majority of those voting.

§ 31. Voting Rights of Individual Members.

The apportionment of voting strength according to the number of shares of stock held by each member had its origin in statutory law; but has become a custom so well established that an intention to

follow it is implied, in the absence of any indication or direction to the contrary in the charter, articles, or general statutes.

The rule that directors and other agents for a corporation shall not exercise its authority in their own interest, at the expense of the membership, has no application to them when assembled in a corporate meeting for the purpose of voting, unless they flagrantly sacrifice the interest of the corporation for their own gain. So long as they act in good faith and with due diligence, members may elect themselves directors and officers of the corporation, and thus control its business and funds.

§ 32. Of the Right of Cumulative Voting.

The right of cumulative voting is conferred by statute, though it is so general that a denial of the right would probably meet with judicial condemnation. It consists in the right of a stockholder to cumulate his shares upon one, or any number of candidates less than the whole number, to be elected as directors. When the right is given by statute, the right of a stockholder to exercise it cannot be denied him. And otherwise, all provisions, requirements and regulations governing corporate elections, whether found in statutes or by-laws, enacted under authority derived from statutes, must be substantially complied with.

The right only applies to voting for the election of directors. Under it, a stockholder may cast as many votes as he holds shares of stock, multiplied by the number of directors to be elected, for a single di-

rector, or he may distribute them among two or more less than all. The policy of statutes and by-laws in securing this right is to insure to the minority interest representation upon the board. By that means only can the majority be prevented from electing the whole board. By the exercise of this right, while the majority interest cannot be prevented from electing a majority of the board, the minority have it in their power to be always represented upon the board, and thus keep posted as to the nature of the business transacted and transactions of the board. One important advantage of this is to keep them in a position to resort to the courts in time to prevent any infringement of their rights as, for instance, an unauthorized diversion of corporate funds.

§ 33. Of the Manner of Voting.

The members having assembled, it is their right to control and conduct the voting as they please, subject only to the restraints imposed by statutes and by-laws. It may be remarked, however, that the transactions to be consummated at corporate meetings are usually talked over among stockholders beforehand, especially if the stockholders are few, and the corporation is, as are most trading and manufacturing companies, a "close" corporation. Where such is the case, the meeting is held simply to conform to law, the principal purpose being to have a proper record made and preserved, the proceedings being merely perfunctory, and the principal labor devolving upon the secretary. It often happens, however, that there is a contest for control, and, where that occurs, it is

especially important that all important formalities should be observed.

Statutes are usually found requiring that elections for directors shall be conducted by sworn inspectors. It is the privilege of the members at the meeting, and not that of the directors, to select the inspectors. (See Forms 121, 122, § 138.)

§ 34. Stock Books as Evidence of the Right to Vote.

Under statutes requiring stock-books to be kept, and that every person acting at stockholders' meetings (in person or by proxy or representative), must be a member thereof, or a bona fide stockholder, having stock in his own name on the stock books of the corporation, at least ten days prior to the election, no person is qualified to vote at such election unless the qualifications named in the statute be met.[4]

The general rule governing the right to vote at corporate meetings is that the stock or membership book furnishes the prima facie evidence of the right, and that the corporation cannot be required to decide the question otherwise, that being one of the objects for keeping a stock certificate book in which transfers are required to be recorded. This rule has, however, received many modifications, in endeavors to avoid the hardships and injustice of particular cases, and most of the States have found it necessary to regulate the matter by definite statutory provisions. It is the object of such statutory regulations to afford to corporations a convenient test of the right to vote in cases of dispute between persons claiming ownership of its stock; and the inspectors at elections for

directors, or others in charge of corporate meetings, are not bound to stop or delay proceedings in order that the equitable rights between pledgees and trustees and their beneficiaries may be investigated. They are only required to follow such statutes, and may be governed by the showing of the stock book, and observe only such exceptions thereto, if any, as are made by the statute. Such statutory provisions should be, for convenience, and usually are, embodied in the by-laws.

The rule that the stock book shall control as to voting rights of stockholders does not, however, apply in the cases of administrators, executors, guardians and curators. A transfer such as occurs in those instances, by operation of law, is just as binding upon the corporation and its officers as if the transfer had been duly entered. They hold the legal title in a representative capacity, and would be entitled to vote even in the absence of a statute or by-law provision on the subject. It is to be borne in mind that the corporate record is only prima facie evidence of title to stock, and cannot stand in the way of the assertion, before judicial tribunals, of clear legal rights, though in conflict with the entries therein.

The rule that the legal owner may vote the shares in his name is subject to an exception in the case of shares owned by the corporation. And this exception holds good although such shares are held for the corporation in the names of trustees. This results from the principle that a corporation cannot become a holder of its own stock in the ordinary sense of that term, that it cannot receive dividends from itself, cannot re-

spond to calls for assessments, or be responsible for debts otherwise than as as corporation.

§ 35. By What Officers Meetings Conducted.

By-laws sometimes provide that the regular officers of the corporation shall officiate at meetings of stockholders. In other corporations the matter is left entirely to the choice of those who attend. It is better, however, there being no special reason to the contrary, that the secretary should officiate, lest some one unfamiliar with the records and the method of correctly keeping the minutes be chosen, thus causing delay and confusion.

Under a by-law provision that the president and secretary of a company shall respectively preside and keep the minutes at all stockholders' meetings, they simply take their places at the appointed hour and proceed according to the usages of parliamentary law. The secretary having provided the president with the order of business, the latter calls those present to order, and states the first order of business. In the absence of the president, the vice-president, and so on in proper order, presides. If no one designated in the by-laws to preside is present, those present may select any one of their number to perform that duty.

If no provision is made in the by-laws with reference to the officers' or stockholders' meetings, that matter is entirely in the hands of those in attendance. In such case, any one of them could call the meeting to order and state as the first order of business the election of a presiding officer of the meeting. After the election of a chairman he would take

his place and the meeting would proceed with the election of a secretary. But these are details with which most persons are familiar, and need not be further pursued.

The duties of the secretary pertaining to the minutes of stockholders' meetings are important, and are elsewhere considered in detail. (See Chapter 14.)

§ 36. Preparation and Calling of the Roll.

The organization of the meeting having been completed by the election of a presiding officer and secretary, the next business in order is the calling of the roll of the stockholders. (See Form 115.) There must be a preliminary call of the roll to determine whether a quorum is present. It is of no legal consequence how the roll is called, whether in the numerical order in which the names of the stockholders appear in the certificate register or alphabetically from a list prepared in advance of the meeting. But the latter is by far the more expeditious method. In some States, at least with respect to certain classes of corporations, an alphabetical list of stockholders is required by statute to be posted up at the place of meeting, prior thereto.

The roll may be arranged in the following form :

Name.	No. of Shares.	Represented by
Abbott, C..... ..	100	Self.
Bacon, J.....	50	R. Bush, proxy.
Clark, A.....	500	B. Clark, Adm'r.
Clark, Wm.....	200	No one.

(See also Form 115, § 135.)

As the names are called and number of shares owned stated, each person present representing his own stock should answer ; likewise if any one be present, whether stockholder or not, representing an absentee by proxy, he should answer to the name of such an absent stockholder, at the same time presenting his proxy to the secretary. The secretary should, as the roll proceeds, make the appropriate entries in the third column, as shown in the above form.

When the roll is finished, the secretatry should be able, in the space of a very few minutes, to announce the totals of stock represented and not represented at the meeting. If such totals show less than a quorum present, there is no alternative but to adjourn the meeting, either to a specified date, or sine die. If adjourned to a specified date, no new notice is legally required to be given, though the proper officers usually give notice voluntarily as a reminder to the stockholders. The adjourned meeting is a mere continuation of the regular meeting, and after being called to order, may be proceeded with from the point at which the adjournment was taken, just as if no adjournment had occurred. But if the regular meeting has been adjourned for want of a quorum, it is necessary that the minutes should show it. In that case, the roll must be called anew at the adjourned meeting. If still no quorum appear, those present, if so disposed, may again adjourn to a fixed date, earlier than the next annual meeting; or they may adjourn sine die. There is no limit to the number of adjourned meetings of a regular, or for that matter, of of a special, meeting that may be taken. Of course,

the presence of a quorum and the transaction of business does not stand in the way of an adjournment being taken to an intermediate date. In fact, it often occurs that business coming before a meeting cannot be finally disposed of at one session, for the reason that an intelligent decision cannot be reached without further information not then at hand, or because the business is of such vast importance as to require further time for consideration. A variety of reasons may suggest a continuance of the matter for consideration at a future date.

If a quorum appear at the date fixed for the regular meeting, or if it adjourn to an intermediate date for lack of a quorum, and a quorum then appear, and that fact be made to appear on the minutes, it is not necessary that the minutes of meetings adjourned therefrom should show a quorum present. If nothing appear to the contrary, the law will presume that all those constituting a quorum at the prior meeting returned to the adjourned meeting. Such presumption is overthrown, however, if it appear from the minutes of the adjourned meeting that a quorum was not in attendance thereat.

All proxies should be left with the secretary during the meeting, in order that any one interested may inspect them. (For right of proxy voting and forms, see Chapter 5.)

§ 37. Proving Notice of the Meeting.

The roll-call being completed and a quorum answering, in person or by proxy, the secretary should be required to produce and file legal notice of the meet-

ing, especially if any of the stockholders be absent, or unrepresented. It would be worse than useless to proceed to the transaction of business at a meeting illegally called and held, the proceedings of which could be set aside by any absent and dissenting stockholder; and if the proceedings have been legal, evidence of their legality should be preserved. Such proof may consist of the printed notice as published, with the publisher's affidavit thereto, and a copy of the notice mailed by the secretary to each stockholder, with his certificate or affidavit of mailing attached thereto. These should be filed and a reference to their production and filing should be entered in the minutes.

The secretary's certificate to the notice of meeting sent to the stockholders is required in the by-laws of some corporations to be furnished by him when he produces the notice for inspection at the time and place of meeting.

It may be as follows:

Form 28.

.....

District of Columbia, } ss.
City of Washington. }

The undersigned, as Secretary of the New Era Printing Company, hereby certifies that, in accordance with the by-law requirements, original notices, of which the attached "Exhibit A" to this affidavit is a copy, were properly enclosed and directed, and, with postage fully prepaid, were by him mailed at Washington, D. C., to the last known postoffice addresses of each and every stockholder of record of said corporation.

J. F. WESTON,
Secretary.

.....

It is within the province of any corporation, and may be so provided in the by-laws, to require the due service of notices of meetings to be proven by the affidavit of the secretary. It is a guarantee of regularity and is very appropriate when matters of great importance are to be acted upon.

The affidavit may be as follows :

Form 29.

.....

District of Columbia, } ss.
City of Washington. }

On this the 1st day of March, 1904, before me personally came J. F. Weston, who being first duly sworn, deposes and says: that he is the Secretary of the New Era Printing Company; that on the 21st day of February, 1904, original notices of which the attached "Exhibit A" to this affidavit is a copy, were properly enclosed and directed and with postage fully prepaid were by him mailed at Washington, D. C., to the last known postoffice addresses of each and every stockholder of record of said corporation.

J. F. WESTON.

Subscribed and sworn to before me this 1st day of March, 1904.

(Notarial Seal.)

NEWTON WISHART,
Notary Public within and for the District of Columbia.

.....

The secretary may be likewise required to authentificate with his certificate or affidavit, the published notice.

The affidavit to a published notice of a meeting may be as follows :

Form 30.

.....

District of Columbia, }
City of Washington. } ss.

On this the 1st day of March, 1904, before the undersigned notary public personally came J. F. Weston, being first duly sworn, deposes and says: That he is the Secretary of the New Era Printing Company, and that the annexed notice, marked "Exhibit A," was published in the Washington Post on the 14th and 21st days of February, 1904.

J. F. WESTON.

Subscribed and sworn to before me this, the 1st day of March, 1904.

(Notarial Seal.)

NEWTON WISHART,
Notary Public within and for
District of Columbia.

.....

§ 38. Reading and Correcting Minutes of Prior Meeting.

The next business, after proving notice, is the reading, correcting, (if necessary), and approval of the minutes of the last annual, and of any intermediate, meeting, the minutes of which have not been approved. No formalities are required in the performance of this function. The approval need not be by formal motion. It is sufficient, there being no objection, if the president, at the conclusion of the reading, announces that if there be no objection, the minutes stand approved. If, however, there be a correction suggested, and any dispute arises as to the propriety of changing the minutes, it should be decided by formal vote, and if it result in a change being directed to be made, the minutes of that meeting should show

the minutes as read and the correction made. The same showing should appear on the minutes which are corrected. Such correction may be shown by drawing a line in red ink through the part which was changed, without obliterating any of it, and interlining the entries directed to stand as the corrected minutes; also, by making a marginal reference to the page of the minute book where shown that the change was ordered. The same course should be pursued where amendments are made to minutes of meetings of the Board of Directors. Especially should the secretary take this precaution in case the change is important, because a dispute might subsequently arise as to just what correction was ordered to be made. The change might even become the basis of litigation, and it would then be to his advantage to be able to furnish conclusive proof of his authority to make the alterations.

It pertains to the regular business of an annual meeting to approve the minutes of the preceding annual meeting, and of any intermediate meeting, whether adjourned or special. It would be the better course, however, if the minutes of annual meetings were approved at that meeting, a recess being taken to enable the secretary to write them up.

The approval of minutes of an annual meeting is not the province of a special meeting. Nevertheless, if the approval of the minutes of an annual meeting be designated in the notice for a special meeting as part of the business to be done thereat, there can be no legal objection to such approval being had.

The Board of Directors is a distinct body from that

of the assembled stockholders, and each has legal control of its own minutes. Therefore, minutes of directors' meetings should not be read for approval or correction at stockholders' meetings ; and the converse of this proposition holds good.

§39. Reports of Officers—President.

In corporations whose business is of limited scope and magnitude, there is seldom any necessity for providing in the by-laws for formal written reports by the officers. An oral statement as to the progress of the business, supplemented by the showing of the corporation's books of account, will, in the case of such corporations, answer all purposes. But even if the by-laws should require written reports, an omission of reports would not invalidate any proceeding or transaction. The same is true where the affairs of the corporation are of great magnitude, variety and importance. But in cases of the latter class of corporations, such, for instance, as railroad, banking, insurance and water companies, a report from certain officers is a matter of so much interest to the stockholders, and sometimes to the general public, that the absence of any report from them at the annual meeting would be extraordinary, and it might excite the gravest suspicions.

The order in which the reports are received is a matter of no special importance; but, usually, the president's report is first delivered. It is sometimes read, and in other instances, especially if lengthy, merely placed on file and subsequently copied or printed for the inspection of the stockholders. It may be or-

dered filed with or without a motion, since that is the proper disposition of it at that stage. Subsequently, its suggestions may be considered under the head of new business.

Next would naturally come the treasurer's report, followed by that of any other officer required or desiring to report.

Following this, the reports of committees would be received. Sometimes the most important business of the corporation is in the hands of standing committees, such as finance and executive committees. Subjects of importance may have been referred to a special committee of stockholders.

There is nothing irregular in taking up, considering and disposing of reports as, and when, made. It is usual, however, to order them up under the head of new business. It is the duty of the secretary to take charge of and preserve all reports made in writing, and in the case of oral reports, to make an entry of their substance in the minutes.

Reports of officers and standing committees to the annual meeting of stockholders, while one of the important features in corporations which have numerous aud widely scattered stockholding and bond holding interests, are of but little moment in the ordinary business concern, or "close corporation," where the holders of the stock are few in number and all closely connected with the business. Unless there is some provision in the by-laws requiring it, neither the president nor any other officer is under any compulsion to make a report in writing ; and, in probably

ninety per cent. of corporations, such reports as are made are oral.

The more detailed reports of officers and of the executive committee, (where there is such committee), are usually not given at stockholders' meetings, but are submitted to the Board of Directors, to which body any stockholder may apply for more definite information.

The president's report leads in importance. He should give a general review of the business for the preceding year, the condition of the corporate property, and the prospects for the next year, with as much detail as he deems prudent to make public. It may be read by him or by the secretary for him. The following form may be adapted to the conditions of any corporation :

Form 31.—New Era Printing Company, President's Annual Report.

.....

To the Stockholders of the New Era Printing Company,

Gentlemen: It is now my duty and pleasure to report to you the condition of the business and properties of this corporation, and the outlook, as I view it, for the next year. (Here should follow a general review of the year's business with reference to any periods of depression or prosperity, and a statement of gross financial results, which may be followed with a forecast of probabilities for the coming year.)

Respectfully submitted,

JAMES WILLARD,
President.

Washington, D. C., Jan. 15, 1904.

.....

§ 40. Reports of Officers—Treasurer.

The Treasurer's report to the stockholders should deal in aggregates, or go into details, according to the nature of the business in which the corporation is engaged and its relations to other concerns engaged in like business. Often it would be impolitic to go into details, in a report to the stockholders. It should contain, under a proper heading, a showing of receipts, or articles produced, with their market value, under which will be classed the stock of merchandise or products on hand.

Following this will come the heading "Expenditures." These may be classified thus:

Materials	$ 8,000
Salaries	15,000
Repairs	2,500

etc.

Both sides of Receipt and Expenditure Account should be totalized and the balance shown.. Following this the financial status of the corporation should be shown, under the heads of "Assets" and "Liabilities." In this account the plant, money, all property, and bills receivable will figure as assets ; and capital stock, accounts due and unpaid, and dividends, will fall under the head of liabilities.

§ 41. Reports of Committees.

Executive Committees of the Board of Directors do not usually report to the stockholders, but to the Board. But a Committee of Stockholders may have been appointed at a prior meeting, either annual or special, and a report from it may be due. The re-

port will, of course, conform to the circumstances and conclusions reached, so that forms would be of little use.

Frequent purposes of appointing committees are to examine property offered to be sold to the corporation, to consider amendments to the charter or by-laws, to consider the advisability of consolidating with another corporation, and any other matter which cannot be conveniently dealt with and intelligently disposed of in detail at a meeting. The matter is usually sufficiently urgent to suggest the propriety of adjourning the meeting to an intermediate date, rather than sine die, which would carry the matter over a whole year, and appoint a committee to deal with the matter during the interval.

The following is a report of a committee appointed to examine property offered for sale to the company:

Form 32.—New Era Printing Company. Report of Committee on Offer on New Site for Printing Office.

.....

To the Stockholders:

Your committee appointed at the annual meeting of the Stockholders of this corporation held on the 15th day of January, 1904, to examine the lot and improvement thereon offered by Homer Osgood for a site for its business at the price of $15,000, respectfully report as follows:

We find that the lot without the building would sell for the amount asked for it, and the title to be good. We find the building thereon, in its present condition, unsuitable for the business of this company, but that it could be put into proper shape for said business at a cost of not exceeding $5,000; also that it would cost at least $10,000 to build on said lot as good a building as that already standing thereon.

In conclusion we recommend that the offer of said Osgood be accepted and that the Board of Directors be authorized and instructed to secure a conveyance of said lot and improvements to this company and to make payment therefor according to the terms of said offer.

E. P. JONES,
M. L. BENNETT,
ASA ROBERTS,
Committee.

.....

§ 42. Election of Directors.

The next order after reports are received is the election of directors. This is usually the most important, and sometimes the only important, business to be transacted at a stockholders' meeting.

Under the statutes of several States, the directors must be voted for by ballot under the supervision of inspectors. These are appointed or elected from among the stockholders present. In one or two States they are required to be sworn; and where such statutes exist, their written oaths should be filed with the Secretary, who is sometimes empowered to administer the oaths. The inspectors so appointed or elected and qualified usually have entire charge of the election, the President only retaining general supervision of the meeting.

Where there is no statute prescribing how such elections shall be conducted, the by-laws may specifically prescribe the method. Often, however, the by-laws merely provide generally that directors shall be elected at the annual meeting, and the vote necessary to elect; also the qualifications of directors. But whether the election be conducted by inspectors or

under the immediate supervision of the President, it is usually a very simple matter, the preponderating stockholding interest usually determining in advance of the meeting upon the personnel of a majority of the Board, and the minority upon the personnel of its representatives.

Even where there is an exciting contest, as sometimes happens, it merely requires a clerical task and a calculation to ascertain the result of the voting. In case the election has been conducted by inspectors, they may announce the result, or may ascertain it and have it announced by the President; where there are none, the Secretary conducts the balloting, and from his tally the President declares the result.

The by-laws usually fix the number of votes required to elect. The usual provision is that the five (or other number to be elected) receiving the highest number of all the votes cast shall be declared elected. If, there being only six candidates, and 500 votes being required to elect, four should receive 500 votes each, and two 450 votes each, the four would be declared elected, while as to the other two, a new ballot would have to be taken, until it was found that one of them had received a majority.

§ 43. Unfinished Business.

The election of directors exhausts the regular business, which is the main purpose of the annual meeting. The next order is that of unfinished business. This head includes any subjects the consideration of which was not completed at a former meeting. It includes any matters taken up at former meetings,

whether regular or special, and referred to any officer or committee, to be reported upon at the meeting then in session. If the report has been presented under the head of reports, such report may now be called up to be acted upon. If the report has not been presented, this is the proper stage for its presentation and for action upon it. Any stockholder in attendance may call it up under this head, if the President or chairman of the meeting should, for any cause, fail to do so; but it is peculiarly the province of the latter to call the matter to the attention of the meeting.

§ 44. New Business.

If any matters properly coming under the head of unfinished business should have been overlooked, they may be very properly called up and disposed of under the head of new business; or if technical objection be raised, the meeting may return to the head of unfinished business.

The term new business so clearly designates the character of business to be transacted under that head that explanation is almost superfluous. Any matters of unusual importance which may have been under consideration before the Board of Directors, but which they did not feel authorized to finally dispose of, or did not wish to assume the responsibility of finally acting upon, would properly be considered under this head. So would any desired ratification or repudiation of action already taken by the Board of Directors be properly treated and disposed of as new business. So would any change of policy in the cor-

porate affairs, any amendment of the by-laws, increase or diminution of capital stock, or disposal of funds or property of the corporataion, come properly before the meeting at this stage.

§ 45. Adjournment.

Of all corporate business, the easiest thing to do, ordinarily, is to adjourn. But sometimes even that simple matter leads to a difference of opinion and discussion, and may necessitate a formal vote. If there be no suggestion of an adjourned meeting, adjournment takes place as a matter of course when all business which has been called up for consideration has been disposed of, and no motion is necessary for the purpose. The presiding officer simply says: "If there is no other business, this meeting will stand adjourned. It is so ordered." That constitutes adjournment sine die. In a case of a motion to adjourn to a specified intermediate date, if there is a division and discussion, the question is settled by vote as any other question. In case two or more motions to adjourn to as many different dates, the motions have precedence according to established parliamentary usage.

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[1] Martin v. Deetz, 102 Cal. 55; Wall v. Mines, 130 Cal. 27.
[2] San Diego Gas. Co. v. Frame. 137 Cal. 441.
[3] Curtin v. Salmon River, etc., Ditch Co., 130 Cal. 345.
[4] Smith v. San Francisco, etc., R. R. Co., 115 Cal. 584; People ex rel., Probut v. Robinson, 64 Cal. 373; Market St. Ry. Co. v. Hellman, 109 Cal. 57, 579; Krouse v. Durbrow, 127 Cal. 681.

CHAPTER IV.

Special Meetings of Stockholders.

46. By Whom, How and Upon What Authority Called.
47. Notice of Special Stockholders' Meeting.
48. Waiver of Notice.
49. Compliance with Legal Formalities Required—How Special Stockholders' Meeting Conducted.

§ 46. By Whom, How and Upon What Authority Called.

However a special meeting be initiated, whether by the stockholders or by the Board of its own volition, where action by the Board of Directors is required, it will act, and call the meeting by resolution, which may be as follows :

Form 33.

.....

Be it resolved that a special meeting of the stockholders of the New Era Printing Company be and is hereby called to be held at the office of said corporation on Tuesday, the 10th day of March, 1904, at 10 o'clock a. m., for the purpose of considering and acting upon a proposition to dispose of the present plant of this company and substitute one comprising more modern machinery; and the secretary is hereby authorized and directed to give notice of said meeting as required by the by-laws.

.....

Special meetings of stockholders may usually be called by the Board of Directors, without suggestion from the stockholders. In most of the States, it is the duty of the Board to call a meeting

when a certain proportion of the stockholders request it in writing. No formality is required in the request. It may specify a date, or simply request that the meeting be called at an early date, leaving the date to be fixed by the Board in issuing the call. It is usual, however, for the purpose of the meeting to be stated in the request.

When action by the Board upon the request is desired, it may be as follows :

Form 34.

.....

The undersigned stockholders of the New Era Printing Company, constituting more than one-third of the subscribed capital stock of said corporation, hereby request that a special meeting of the stockholders be called, to be held at the office of said corporation at an early date, not to exceed ten days from this date, to consider the proposition of disposing of the present plant and substituting one comprising more modern machinery.

Dated March 1, 1904.

To the Board of Directors of the New Era Printing Company :

E. P. Jones, holder of 10 shares.

M. L. Bennett, holder of 25 shares.

Asa Roberts, holder of 400 shares.

.....

The call and waiver by stockholders could only be used where the stockholders were near together, or few in number and easily accessible, as well as harmonious in their relations. In the absence of these conditions, a special meeting must be regularly called, that is, according to prescribed formalities, and notice of the meeting given in due form.

The call is often confounded with the notice. But the call is really the demand, request or moving cause for the notice of the meeting being given. It usually comes to the Secretary from the President, or Board of Directors, though, even when the Board orders a meeting, the President is usually authorized and directed to call it. The call may, under provisions found in the statutes of most of the States, and in the by-laws, even where there are no such statutes, originate with the stockholders, a certain number or proportion of whom are usually given power to originate a call for a meeting. When the stockholders exercise this power they may do so by a request as follows:

Form 35.

.....

To the President of the New Era Printing Company:

The undersigned, holding a majority and more of the entire voting stock of the New Era Printing Company, hereby request that you call a special meeting of the stockholders of said corporation, to be held at the office of the company, 50 Printing House Square, Washington, D. C., at 10 o'clock a. m., on the 15th day of May, 1904, for the purpose of considering and acting upon a proposition to remove the plant of said company to a new site, and the transaction of all such other business as properly pertains to and is connected with such removal.

This May 4, 1904.

E. P. Jones, owning 10 shares.

Asa Roberts, owning 400 shares.

Robert Ainslie, owning 100 shares.

.....

In this case the request really constitutes the call, and all that the President need do is to supplement it

with his formal endorsement or approval, directed to the Secretary, which may be as follows :

Form 36.

.....

To the Secretary of the New Era Printing Company :

In compliance with the within (or foregoing) request, and for the purposes set forth therein, you are hereby instructed to send out notices, in accordance with the by-law requirements of the company, for a special meeting of its stockholders, to be held in the office of the company, at 10 o'clock A. M., on the 15th day of May, 1904.

Washington, D. C., May 4, 1904.

JAMES WILLARD,
President.

.....

A resolution by the Board of Directors, calling a special meeting of stockholders, without requiring any act of the President, but requiring the Secretary to proceed directly, would be as follows:

Form 37.

.....

Be it resolved that a special meeting of the stockholders of the New Era Printing Company be called to meet at the office of said corporation, No. 50 Printing House Square, Washington, D. C., on the 15th day of May, 1904, at 10 o'clock A. M., for the purpose of considering and acting upon a proposition to move the plant of said company to a new site, and to transact all such other business as properly pertains to and is connected with such removal; also that the secretary give notice of such meeting, as is required by the by-laws.

.....

If it were desirable that the President, as such, should participate in calling the meeting, then in lieu of the clause, "also the Secretary," etc., insert the clause, "and that the President cause this resolution to be carried into effect, by causing this notice to be given in accordance with the by-laws."

In some corporations, the President may call a special meeting at will, without waiting for a resolution by the Board, or a request by stockholders. Such a call by the President may be as follows :

Form 38.

.....

The New Era Printing Company,
J. F. WESTON, Esq.,
Secretary.

In accordance with the authority vested in me, I hereby call a special meeting of the stockholders of the New Era Printing Company, to be held at the office of said corporation, No. 50 Printing House Square, in the City of Washington, D. C., on the 15th day of May, 1904, for the purpose of considering and acting upon a proposition to move the plant of said company to a new site, and to transact all business as properly pertains to and is connected with such removal ; and I hereby authorize and direct you to send out notices of said meeting to the stockholders of said corporation in accordance with the requirements of the by-laws.

Dated May 4, 1904.

Respectfully,
JAMES WILLARD,
President.

.....

§ 47. Notice of Special Stockholders' Meeting.

A notice by the Secretary of a special meeting of

stockholders, however called, should be directed to each stockholder, and may be as follows:

Form 39.

.....

Office of
New Era Printing Company,
50 Printing House Square,
Washington, D. C.

May 4, 1904.

To Mr. E. P. Jones:

Please take notice that, pursuant to the call of the President, a special meeting of the stockholders of the New Era Printing Company, will be held at the office of said Company, No. 50 Printing House Square, in the City of Washington, D. C., on the 15th day of May, 1904, at 10 o'clock A. M., for the purpose of considering and acting upon a proposition to move the plant of said company to a new site, and transacting all such other business as properly pertains to and is connected with such removal.

Respectfully,

J. F. WESTON,
Secretary.

.....

If the call has come to the Secretary directly from the Board of Directors, he would insert, in lieu of the word "President," in the above form, the words "Board of Directors."

In addition to the notice given to each stockholder personally, a notice is often published in one or more newspapers. This may be done in order to comply with a statute or by-law provision, in which case it is usually a mere formality, or it may be done with a view to reaching any who may fail to receive the personal notice, which result is sometimes attained

in the case of a large corporation whose stockholders are numerous and widely separated, especially if its notices are uniformly published in the same newspaper.

The notice for publication may be as follows:

Form 40.—Notice of Special Meeting of Stockholders.

.....

New Era Printing Company:

Notice is hereby given that a special meeting of the stockholders of the New Era Printing Company will be held at the office of said corporation, No. 50 Printing House Square, in the City of Washington, D. C., on the 15th day of May, 1904, at 10 o'clock A. M., for the purpose of considering and acting upon a proposition to move the plant of said Company to a new site, and to transact all such other business as properly pertains to and is connected with such removal. Said meeting has been called by order of the President of said corporation.

Washington, D. C., May 4, 1904.

J. F. WESTON,
Secretary.

.....

§ 48. Waiver of Notice.

A convenient method of insuring unquestioned validity of the proceedings taken at a special meeting is to obtain a waiver of notice from every stockholder. This method is specially recommended when it is desired to hold a meeting earlier than it could be held if the full legal notice were given according to the statute or by-laws.

When the stockholders are few and easily accessible, the officers of the corporation well known to

the stockholders, and the stockholders harmonious, it is often convenient to procure a formal waiver of notice, especially if it be desirable to hold a special meeting at an earlier date than the time specified in the by-laws, or statute, for giving notice. By this method, a meeting may sometimes be held within a few hours after the occasion for the meeting arises. Such waiver should be in writing, filed with the Secretary; and the minutes should clearly refer to such waiver and filing as to absent stockholders, in connection with a statement as to those present. It may be remarked that a waiver is as effectual for an annual, as for a special meeting. In either case, care should be taken that there is a waiver on file for each and every stockholder not actually notified or in attendance.

The waiver is often attached to a notice; in other instances it is unattached. The call and waiver of notice of annual meeting (see Form 27) will answer for a special meeting by changing the word "annual" to "special."

§ 49. Compliance With Legal Formalities Required—How Special Stockholders' Meeting Is Conducted.

The requirement that the purpose of the meeting shall be stated in the notice must be strictly complied with. However the call originates, the duty of notifying the stockholders devolves upon the Secretary. He must see that notice is given in accordance with the provision of the statute or by-laws to every stockholder. A failure to so notify one of them

leaves it in his power to nullify everything done at such meeting.

The by-laws should, and usually do, provide for special meetings of stockholders. Where there are statutory provisions on the subject, of course the by-laws may not conflict therewith; but they may provide requirements additional to those of the statute. Usually they merely embody the statutory provisions. But whatever the requirements, it is essential to the validity of business transacted at a special meeting that it be called in conformity thereto. The meeting should be organized, the notice proved, the presence of a quorum ascertained, and the meeting proceeded with in all respects as at a regular meeting, except that no business should be transacted other than that specified in the notice, unless all the stockholders are present, or represented by proxy.

Where all are present, mere dissent from the decision upon matters not specified in the notice, evidenced by voting upon the proposition does not invalidate the action taken. But it is thought that it would be otherwise if even one of those present protested against the taking of action on a matter not specified in the notice. The notice is required to specify the business to be done for a double purpose: first, to call the attention of the stockholder to the fact that such meeting is to be held; secondly, to give him time to consider how he will vote upon the proposed business.

The addition to the specification in the notice of the words, "and such other matters as may come before

such meeting," does not authorize action upon any matters not specified in the notice.

As previously stated, there is no material difference between the manner of conducting a regular and a special meeting. Obviously, no matters required by law to be attended to at the regular meeting would be in order at a special meeting.

Matters specified in the call may be called up by the chairman or any stockholder present and proceeded with, and disposed of by motion or resolution. If it be a matter of considerable importance, and it usually is, it would be better to embody it in a resolution, so as to enable the Secretary to keep a complete record.

CHAPTER V.

Proxies.

50. Of the General Right of Voting by Proxy.
51. Forms of Proxies.
52. Joint Proxies.
53. Proxy to Vote Shares Owned by Corporations.
54. Revocation of Proxies.

§ 50. Of the General Right of Voting by Proxy.

The right of voting by proxy, like that of cumulating, is of statutory origin; but it has become so universal a custom in the United States that the right would at the present day probably be held to exist even in the absence of statutory provisions, where so provided in the by-laws. The form of authority so to vote is immaterial, provided the intention to substitute the person to whom it is given be made clearly to appear. Nevertheless, there are well settled limitations upon the right, as well as established rules of construction of the instrument conferring it. A proxy cannot be used for any other purpose than that for which it was given. When it authorizes the holder to vote for directors, he cannot represent the stockholder on other questions, such as a dissolution of the corporation, or sale of the entire corporate property and business.

It is a common practice, and also convenient as well as entirely commendable, if not perverted to unfair advantages, for the Secretary to send out with the notices of stockholders' meetings, proxies in blank, with

a request that the same be signed, and either returned in blank or filled out with the Secretary's name inserted in the blank reserved for the attorney in fact. Such proxies can always be revoked at the pleasure of the person giving it; and this is true, although it recites that it shall be irrevocable.

In some States there are limitations upon the life of proxies, usually limiting their use to a few months, thus preventing the same proxy being used at more than one annual meeting.

While the legal right of a stockholder to vote his stock as he pleases cannot be questioned, nor can his right to confer, by proxy, upon another the right to vote it, yet no corporate authority, nor even a court, can compel him to give a proxy, in the absence of an agreement upon, or for, a valuable consideration, that he should give it.

§ 51. Forms of Proxies.

Proxies may be general and unlimited in form, or they may be limited as to time or as to extent of authority, or to a particular meeting, or in all these respects.

The forms which follow will be found adapted to all requirements:

Form 41.—Without Limitation.

.....

Know All Men By These Presents, That I hereby constitute and appoint Henry Brown my true and lawful attorney to represent me at any and all meetings, general and special, of the stockholders of the New Era Printing Company that may be held while I remain a stockholder in said corpora-

tion, and for me and in my name and stead, to vote at all meetings which may be held upon the stock then standing in my name on the books of said corporation, and I hereby grant my said attorney all the power that I might or should possess if personally present at such meetings.

E. P. JONES.

Dated May 1st, 1904.

.....

To limit the above proxy as to time only, leaving it otherwise unlimited, insert, in lieu of the words, "while I remain a stockholder in said corporation," the words, "on or before," naming a date.

Such a proxy becomes void and ineffective at the time limited, without revocation, or further act by the person giving it.

The above form, so changed, would authorize the proxy to vote upon any stock held by Jones at any meeting held during the period. If it were desired to limit the authority to the stock owned at the date of giving the proxy, that could be done by inserting the word "now," between the words "stock" and "standing," in lieu of the word "then."

Sometimes the use of the stock at a particular meeting is deemed so important that the inability of the person to whom the proxy is given to act is provided against. That is accomplished by clothing him with the power to substitute another, in case he is from any cause unable, or disinclined to attend the meeting. Such proxy would be as follows :

Form 42.

.....

Know All Men By These Presents, That I hereby constitute and appoint Henry Brown, my true and lawful attor-

ney, with full power of substitution and revocation, to represent me at the special meeting of stockholders of the New Era Printing Company, to be held on the 15th day of June, 1904, at 10 o'clock A. M., and for me and in my name and stead, to vote at said meeting, and at any meeting to which said meeting may be adjourned, upon the stock standing in my name on the books of said corporation upon which I may be entitled to vote at the date of said meeting, and I hereby grant my said attorney, and to any person substituted by him hereunder, all the powers that I should possess if personally present at said meeting.

E. P. JONES.

Dated May 1, 1904.

.....

Such proxy authorizes the attorney named therein to revoke a substitution made by him and to make a re-substitution. But the proxy given him by the stockholder (above form) may already have been delivered to the person first substituted, hence not accessible to him. In such case he would have to execute and deliver to the person last substituted a new instrument, which may be as follows :

Form 43.

.....

Whereas heretofore, to wit, on the first day of May, 1904 E. P. Jones, a stockholder of the New Era Printing Company, a corporation, executed and delivered to me a proxy reading as follows :

Know All Men By These Presents, that I hereby constitute and appoint Henry Brown, my true and lawful attorney, with full power of substitution and revocation, to represent me at the special meeting of stockholders of the New Era Printing Company, to be held on the 15th day of June, 1904, at 10 o'clock A. M., and for me and in my name and

stead, to vote at said meeting, and at any meeting to which said meeting may be adjourned, upon the stock standing in my name on the books of said corporation upon which I may be entitled to vote at the date of said meeting, and I hereby grant my said attorney, and to any person substituted by him hereunder, all the powers that I should possess if personally present at said meeting.

E. P. JONES.

Dated May 1, 1904.

And Whereas, on the first day of June, pursuant to the authority therein given, I substituted in my place and stead James Wilkinson for the purpose of having the stock held by the said Jones represented and voted at said meeting. Now, by virtue of the further power conferred upon me by the terms of said instrument, I hereby revoke all authority and power of the said Wilkinson, and substitute in his place and stead, and for the same purpose, George Walsh.

Dated May 10, 1904.

HENRY BROWN.

.....

This revocation should be presented to the Secretary prior to the opening of the meeting, if possibe, to enable him to prepare or correct his list:

Form 44.—Proxy, Where Shares Owned by Estate of Deceased Person.

.....

Know All Men By These Presents, That we, A. J. Knox and B. R. Freer, Executors of the estate of H. F. Jensen, deceased, do hereby constitute and appoint F. E. Bunn our true and lawful attorney for us and in our name and stead, to vote on all shares of stock standing in our name on the books of th Market Street Railway Company at a Special General Meeting of Stockholders of said Company, to be

held on the 15th day of May, 1904, and on any adjournment thereof, with full power of substitution and revocation.

All other proxies are hereby revoked.

Dated May 10, 1904.

Estate of H. F. Jensen.
A. J. KNOX,
Executor.
B. R. FREER,
Executor.

Witness:
EVAN JACKSON.

.....

The same form is easily adaptable by guardians, trustees and pledgees.

§ 52. Joint Proxies.

Several stockholders may join in a proxy to one and the same person. A joint proxy may be as follows:

Form 45.

.....

Know All Men By These Presents, That we hereby constitute and appoint Henry Brown our attorney, for us and in our names, place and stead, to vote upon all the stock which now stands, or which may then stand in our respective names upon the books of the New Era Printing Company, a corporation, at the annual meeting of the stockholders of said corporation, to be held on the 15th day of May, 1904, at 10 o'clock A. M., at the office of said company, and at any meeting and place to which said annual meeting may be adjourned; hereby granting to our said attorney full power to act for us at said meeting, or meetings, and in our names and stead, to vote thereat, upon our said stock in the election of directors, and in the transaction of any other or further business that may be brought before said meeting, or meetings,

as fully as we, and each of us, might or should do if personally present.

E. P. JONES.
M. L. BENNETT.

Dated May 1, 1904.

.....

§ 53. Proxy to Vote Shares Owned by Corporations.

A corporation owning shares of stock in another corporation is as much entitled to representation at meetings of the latter and to vote thereat as if the same shares were owned by a natural person. Such shareholding corporation may vote by an agent authorized to directly represent it, or by proxy.

For convenience, and to avoid meetings of the Board of Directors to appoint an agent every time a meeting of the stockholders of the other corporation is called, a general power of attorney is usually given to the attorney of the stockholding company, or some other officer, with respect to such shares. Such authority may be simple in form, or it may be a regular and formal power of attorney, in legal effect, a proxy. Sometimes, however, the shareholding interests being considerable, and the matter upon which the shares are to be voted being of great importance, special action is taken with reference thereto. The resolution of the Board of Directors may, in that case, be as follows :

Form 46.—Proxy Given by Corporation Specific and Limited.

.....

Whereas, The Board of Directors of this Company did,

at a meeting of said Board, held on the 1st day of March, 1904, adopt the following resolution :

" Resolved, That F. E. Bunn be, and he is hereby appointed the agent of this company for the purpose of attending the meetings of stockholders of any corporation whatsoever in which this company owns or holds, or may hereafter from time to time own or hold, any portion of its capital stock, and to vote the shares of this company upon all questions that may come before such meetings."

And, Whereas, The aforesaid resolution has not been rescinded or suspended, and since the date of its adoption has been, and is now, in full force,

Now, Therefore, This corporation, The Excelsior Investment company, acting by and through its Board of Directors, at a regular (or special) meeting, duly called and held on the 2nd day of January, 1904, does hereby constitute and appoint the said F. E. Bunn its true and lawful attorney, with full power of substitution and revocation, to represent it at a special meeting of the stockholders of the Central Railroad Company to be held on the 25th day of March, 1904, at 10 o'clock A. M., for it and its name and stead, to vote at said meeting, and at any adjournments thereof, upon the stock standing in its name on the books of said company, upon which this corporation may be entitled to vote at the date of said meeting, upon the business specified in the notice for said meeting, to wit :

A proposition to increase the bonded indebtedness of said Company.

And said F. E. Bunn is hereby instructed and required to vote in the negative upon said proposition, and to so vote upon all questions arising at said meeting as will militate against the adoption of said proposition, or of any proposition having the effect to increase the bonded indebtedness of said Company.

Granting unto the said F. E. Bunn, subject to the fore-

going instruction and limitation, all the powers that this corporation possesses.

Witness our hands and seals of said Excelsior Investment Company, this the 10th day of March, 1904.

JAMES L. RAY,
President.

(Corporate Seal.)

H. F. DUTTON,
Secretary.

And we hereby ceritify that the above is a true copy of a resolution adopted by the Board of Directors of said corporation.

JAMES L. RAY,
President.

(Corporate Seal.)

H. F. DUTTON,
Secretary.

.....

Form 47.—Instrument by Which Power to Substitute Exercised.

.....

I, John Finn, hereby constitute and appoint F. E. Bunn as my substitute under the power of substitution contained in the following proxies: (here insert description of proxies under which the proxy holder is exercising the power of substitution), to vote on all shares of stock standing in the names of the above-mentioned persons (or corporations) on the books of the Market Street Railway Company, at a special (or general) meeting of the stockholders of said Company, to be held on the 15th day of May, 1904, and at any adjournment thereof, with the same powers, force and effect as if I were personally present and voting.

Witness my hand this 10th day of May, 1904.

JOHN FINN.

.....

§ 54. Revocation of Proxies.

A proxy may be revoked in two ways: (1) by sale of the stock and assignment of the certificate on the books of the company; or (2) by a formal revocation in writing, filed with the Secretary; and a proxy will be revoked by either act, notwithstanding that by its terms it be irrevocable.

As to respective voting rights of the parties to a transfer of stock, see § 164.

By the second method, any proxy given to an individual may be revoked specifically, or the revocation may be in general terms and thus have the effect of revoking all outstanding proxies. For a general and sweeping revocation, the following, filed with the Secretary, will accomplish the desired purpose:

Form 48.

.....

I hereby revoke and annul all proxies, whatever the form or name heretofore given by me as far as the same may authorize and empower any person or persons to represent me, vote in my name and stead, or to any extent, or in any wise act for me, at any meeting or meetings of the stockholders of the New Era Printing Company, a corporation.

E. P. JONES.

Dated, March 1, 1904.

.....

The revocation may be limited to one outstanding proxy, which would not affect another given to a different person to vote the same stock; or it might be in the above general form, with a clause ex-

cepting the particular proxy which it was desired to continue in force.

Though more proxies than one to vote the same stock may be outstanding, all may be revoked by the stockholder by one instrument.

CHAPTER VI.

By-Laws.

55. Importance and Function of By-Laws.
56. Definition and Essentials of Valid By-Laws.
57. By-Laws Distinguished from Municipal Ordinances.
58. Extent and Scope of By-Laws.
59. By Whom Enacted, Amended and Repealed.
60. By-Laws Informally Adopted.
61. By-Laws of Mutual Benefit Society.
62. Relation of By-Laws to Constitution of Corporation Not Organized for Profit.
63. Adopting By-Laws Without Meeting.
64. By-Laws Must Be Recorded.—How Book of By-Laws to Be Kept.
65. Membership Chargeable with Notice of By-Law Provisions.
66. By-Laws Not Binding upon Strangers to the Corporation.
67. Whether Notice of Intention to Amend Required.
68. Enforcement of By-Laws.
69. Power to Enforce Conditions.
70. Regulations Not Formally Adopted.

§ 55. Importance and Function of By-Laws.

Next in importance to the articles or charter, as a constating instrument, is the code of by-laws. The by-laws occupy about the same relation to the articles that statutes hold to the constitution of a State. The articles define and limit the purpose of the corporation, while the by-laws prescribe how the purpose is to be accomplished. While there is but little difference as between different corporations, with respect to the essentials of effective by-laws, yet in prac-

tice considerable difference of form, arrangement and phraseology is found ; and these are inevitabe where it is attempted to make provision in detail for every contingency which may be presented in conducting the corporate business.

The by-laws of a corporation are the rule of its life. It comes into being through some general or special statutes, with its articles, or charter, as the evidence of its existence ; and one of its necessary and inseparable incidents is the power to make by-laws, which become its private statutes for its own government, subject to certain general and well-established limitations to be presently discussed. By its by-laws the management of a corporation's affairs is regulated. They are adopted, in the first instance, by the members or stockholders of the corporation at a meeting, where, if all do not attend, all must at least have an opportunity to be present ; and, when adopted, they become as binding upon every member as the charter itself, into which they are written, as the corporation's rule of conduct. A corporation may begin to live the moment its charter issues, or its articles are filed in the proper offices, but it may not be able to act for the purposes of its creation until those to whom the franchises are given, and who make up its units, have agreed how it shall act, what it shall do, and who shall immediately conduct its affairs.

By-laws having been once adopted, become the permanent rule to govern the corporation's conduct, and every member or stockholder ought to be able to so regard them.

Too great care cannot be taken to avoid ambiguity, obscurity and prolixity in drafting by-laws. Many annoying disputes and much costly litigation have resulted from by-laws that were not easily understood.

§ 56. Definition and Essentials of Valid By-Laws.

By-laws are distinguishable from motions and resolutions, the latter usually applying to particular exigencies. By-laws are also distinguishable from regulations. By-laws bind the members only, while a regulation, if reasonable, affects third persons, who, having notice of it, deal with the corporation.

The most general limitations upon the power to enact and enforce by-laws are: that they must not be in conflict with the articles or general law, and that they must be reasonable and necessary; that is, promotive of the aggregate interest of the membership, without an infringement of the legal rights of individuals.[1]

The power to make by-laws is to make such as are not inconsistent with the constitution and the law; and the power to alter has the same limit, so that no alteration could be made which would infringe a right already given and secured by the contract of the corporation.[2] Treating the articles, or charter of a corporation as its constitution, a by-law may regulate the exercise of power conferred by it, but cannot alter it.[3]

Briefly stated, if a by-law is consistent with the purposes for which the corporation was created, is not in conflict with the law of the land, or contrary to

good morals, and is reasonable, in legal sense, in other words, is a reasonable regulation, it is valid. On the other hand, if it be repugnant to law, whether common or statutory, or the constitution of the State or of the United States, or to public policy or good morals, it is void.[4]

Whether a by-law be reasonable depends very much upon whether it is necessary. It is never necessary to seriously curtail the liberties of the stockholders or members ; and a by-law which seeks to do so is void.

The term "vested right" is often loosely used. In one sense every right is vested. If a man has a right at all, it must be vested in him; otherwise, how could it be a right? The moment a contract is made, a right is vested in each party to have it remain unaltered, and to have it performed. The term, "vested right," however, is properly used to designate a right which has become so fixed that it is not subject to be divested without the consent of the owner, as contra-distinguished from rights which are subject to be divested without his consent.

The question of what are vested rights, and, therefore, exempt from the operation of by-laws, would require much space to discuss. At any rate, a by-law attempting to divest or disturb a vested right, or to impair the obligation of a contract, or to lessen the responsibility of the corporation to its members or stockholders, is, to that extent at least, void and of no effect.[5]

Where a by-law enters into a contract and becomes binding as a part thereof, a subsequent by-law

cannot destroy a right accrued under the contract by virtue of such existing by-law.[6]

A by-law assuming to fix a shorter time for performance than that fixed by a subsisting contract, and declaring a forfeiture of all rights thereunder in case of default, is of no effect.[7] But a by-law of a mutual benefit corporation which provides for the payment of a weekly sum to members in case of sickness, without specifying how long such payments shall continue, may be changed after sickness has commenced, so as to limit the period such payments shall continue thereafter, but not so as to effect payments which have become due before the change.[8]

The same rule applies to by-laws unreasonably restrictive, as is applicable to contracts in restraint of trade ; they are alike unenforceable.[9] But members of an incorporated business association can adopt a valid by-law binding its members not to abuse the right of membership by unfairly competing with the corporation in business. Thus, an incorporated board of trade may enforce a by-law prohibiting its members from gathering in any public place in the immediate vicinity of its exchange room before and after the times when the exchange room is open for general trading, and there forming a market for the purpose of trading for the future delivery of articles dealt in on the exchange.[10] And where a corporation has been formed for the purpose of supplying water for the use of owners of land within a particular district, its stockholders, all of whom are such land owners, may pass and enforce a by-law limiting the right to the use of the water to stockholders.[11]

§ 57. By-Laws Distinguished from Municipal Ordinances.

Although the ordinances of a municipal corporation were at a former period frequently called by-laws, there is a very wide difference between the ordinances and by-laws. The former are binding upon all who happen to be within the territorial limits in which they operate, whether citizens or strangers, whether with or without actual notice, while the latter derive their only force from assent and notice, actual or constructive.[12]

§ 58. Extent and Scope of By-Laws.

As to the extent to which by-law provisions should go into details and specifications, much will depend upon the character of the corporation, the nature of the business to be transacted, and the relation of the stockholders to each other. In the case of what is known as a "close" corporation, that is, a corporation in which there are but a few large stockholders working together harmoniously, for instance, where a copartnership is incorporated in order to perpetuate the business and preserve the firm name, the simpler form may be used. On the other hand, if the corporation be formed to carry on an extensive business, extending over large territory, and covering various lines of business and having numerous stockholders whose relations are not intimate, much friction, dissension and litigation may be avoided by a full elaboration of all important matters covered by the by-laws.

In drafting a code of by-laws, while great care

should be taken to avoid ambiguity and obscurity, yet, as far as is consistent with perspicuity and completeness, the fewest possible words should be used. No doubt should remain as to the meaning. Discord and failure have frequently resulted from unskillfulness in preparing. and absence of due consideration in the adoption of, by-laws. In preparing and adopting them, the fact that the rights and duties of officers and stockholders are fully set forth in statutes should not stand in the way of such rights and duties being fully defined and covered in the by-laws, where the stockholders are widely scattered, or the business is done largely by agents, or the board of directors is numerically large, and are individually engaged in other business. It is better that the law governing corporations should be largely embodied in the compact form of by-laws than that the officers and members should be under the necessity of frequently hunting up the law, or consulting attorneys. Two forms are here given, the one simple, the other containing provisions in extenso. In a small or close corporation, formed merely for superior convenience in carrying on a particular business, the stockholders having been previously associated together in the same business, no by-laws are really needed, except as a formal compliance with the statute requiring the adoption of by-laws. In such cases, very brief by-laws, making the most general provisions, will be satisfactory and answer every purpose. The two sets follow :

Form 49.

BY-LAWS
of the
N. ERA PRINTING COMPANY,
Adopted by the Stockholders at their first meeting,
January 15, 1904.

ARTICLE I.—Stockholders' Meetings.

The Annual Meeting of the stockholders of the Company shall be held at the office of the Company at No. 50 Printing House Square, in the City of Washington, D. C., on the second Monday in January in each year, at 10 A. M., for the purpose of the election of Directors and the transaction of such other business as may lawfully come before the meeting. The notice of such Annual Meeting shall be given to each stockholder of record appearing on the books of the corporation by sending through the Postoffice to their addresses appearing on the books, at least five days prior to such meeting, a written or printed notice, signed by the Secretary, stating the time and place of the holding of such meeting.

Special Meetings of the Stockholders other than those provided for or regulated by statute may be called by the Board of Directors and notice thereof shall be given in the same manner as is provided with respect to the Annual Meetings, and shall state the purpose for which such meetings are called. All meetings shall be held at the Company's office.

ARTICLE II.—Board of Directors.

Sec. 1. The Board of Directors shall consist of five stockholders. They shall be elected immediately after the adoption of these by-laws, and annually thereafter at the Annual Meeting.

Sec. 2. The Board of Directors shall have the management and control of the business of the corporation, and shall

employ such agents and servants as they may deem advisable, and fix the rates of compensation of all officers, agents and employees.

Sec. 3. Whenever any vacancies shall occur in the Board of Directors, by death, resignation, or otherwise, the same shall be filled without undue delay by the majority vote by ballot by the remaining members of the Board. The person so chosen shall hold the office until the next Annual Meeting, or until his successor is elected and qualified.

Sec. 4. The Board of Directors shall meet at the office of the Company on the first Monday in each month, or at such time and in such places as they may by resolution determine.

Sec. 5. The majority of the Directors shall constitute a quorum at all meetings of the Board.

ARTICLE III.—Officers.

Sec. 1. The officers of the Company shall consist of President, Vice-President, Secretary and Treasurer. The office of Secretary and Treasurer may be held by the same person. The officers shall be elected by the Board of Directors by a majority vote of the whole number of Directors. The first election shall be held immediately after the organization of the Board of Directors. Subsequent elections shall be held annually on the day of the Regular Meeting of the Board of Directors next ensuing the Annual Election, the day to be fixed by resolution of the Board of Directors.

Sec. 2. In case of death, resignation or removal of any officer of this Company, the Board of Directors shall cause the election of his successor, who shall hold his office by like tenure for the unexpired term.

ARTICLE IV.—Amendments.

These by-laws may be amended, added to or altered by a two-thirds vote of all the Directors at any meeting, or by a majority vote of the stockholders at any Annual Meeting called for the purpose, but no by-laws regulating the election of directors or officers of the Company shall be made within thirty days before any election of the Company.

Form 50.—Elaborate By-Laws for Ordinary Business Corporations.

.....

ARTICLE I.

Meeting of Stockholders.

Section 1. The Annual Meeting of the stockholders of this corporation for the election of the directors or other purposes shall be held at the office of this corporation in the City of ....., in the County of ....., State of ....., on the second Saturday of January of each year; and Special Meetings of Stockholders may be called by the President, Vice-President, or by a majority of the directors, or by stockholders holding at least one-third of the subscribed capital stock of this corporation. Special Meetings of Stockholders shall be held at the office of this corporation in said City of ..... .

Sec. 2. The call for the Annual Meetings of Stockholders shall be given by either the President, Vice-President, or Secretary of this corporation, and two weeks' notice of such meetings shall be given by advertisement in two daily and one weekly newspaper published in the said City of .....

Sec. 3. The call for such Special Meetings of Stockholders shall be given by the President, Secretary, a majority of the Board of Directors, or the stockholders representing one-third of the capital stock of the corporation, and two weeks' notice shall be given thereof by advertisement in two daily and one weekly newspaper published in the said City of .....; also by personal notice mailed to the address of each and every stockholder appearing on the books of this corporation; said notice to be mailed, postage prepaid, at least five days, including Sundays and holidays, before the date fixed for said meeting.

Sec. 4. At all meetings of stockholders the President, or, in his absence, the Vice-President, and should he be absent also, any director appointed by the stockholders at the meeting, present, shall preside.

Sec. 5. At all meetings of stockholders, the stockholders representing or holding a majority of the subscribed capital stock shall constitute a quorum for the transaction of business at such stockholders' meeting; and every decision of a majority of said stockholders holding a majority of said subscribed capital stock, duly assembled at such stockholders' meeting, shall be valid as an act of such meeting.

ARTICLE II.

Manner of Conducting Annual Meetings of Stockholders.

Section 1. As soon as the Annual Meeting of Stockholders shall have been organized, the President, or, in case of his absence, the Vice-President, shall submit his report to the stockholders, which report shall give a full statement of the affairs of the corporation, of any suggestions and recommendations as to the future conduct of the affairs of the corporation, and of such other matters which might be of interest to the corporation and the stockholders.

Sec. 2. After the reading and submission of the report above mentioned, the stockholders shall take action thereon. They may adopt the whole or any part of the same, and may also reject the whole or any part thereof. Whatever action the stockholders at such meeting may take upon said report, or whatever recommendation the stockholders at such meeting may make upon any matters concerning the affairs of this corporation, shall be a guide and an instruction to the Board of Directors, and the Board of Directors shall see that such action and recommendation are followed and carried out.

Sec. 3. After the business mentioned in Section 2 of this Article shall have been finished, any stockholder may propose an alteration, amendment or repeal of, or supplemental to the by-laws. Before any action on such alteration, amendment, repeal or supplement can be taken, the stockholder so proposing the same shall have the proposed alteration, amendment, repeal, or supplement reduced to writing, and with his name subscribed thereto as the originator thereof, file the same with the Secretary of this corporation, who shall have

at least ten minutes' notice thereof before the stockholders take action upon the same. The Secretary shall thereafter read the proposed alteration, amendment, repeal or supplement to the stockholders at such meetings at length, and the same shall then be acted upon at such meeting; and a decision of the majority of the subscribed capital stock represented, either in person or by proxy, in writing, shall be a valid and binding act upon such proposed alteration, amendment, repeal or supplement.

Sec. 4. The next order of business shall be the election of Directors. The Directors elected at such election shall assume their duties and qualify as such at the first regular meeting of the Directors succeeding such election of Directors, and shall hold their offices for one year, and until their successors are elected and qualified.

Sec. 5. After the election of Directors, other matters may be acted upon.

Sec. 6. The mode of voting by proxy and voting for any purpose, as prescribed by the statutes of this State on that subject, shall be followed so far as practicable, the same now in force being as follows :

Here insert the statute or Code provisions governing subject, thus : Section ..... of an Act approved ..... day of ....., 18....., reads as follows : (inserting it); Section ..... of the same Act reads as follows : (inserting it); or Section ..... of the Civil Code of this State reads as follows : (inserting it); Section ..... of the same Code reads as follows: (inserting it), etc.

Sec. 7. The persons named in the Articles of Incorporation as the Directors appointed for the first year shall hold their offices until after the first annual meeting for the election of Directors to be held this day, and the newly elected Directors shall have qualified and shall assume their duties as prescribed by Section 4 of this Article.

ARTICLE III.

Directors.

Section 1. The corporate powers, business and property

of this corporation shall be exercised, conducted and controlled by a Board of nine Directors, to be elected from among the holders of stock. All the Directors shall be citizens of this State, and every Director must be a holder of stock of this corporation in the amount of twenty-five shares of the capital stock of this corporation. Five Directors shall constitute a quorum for the exercise, conduct and control of the powers, business and property of this corporation; and unless a quorum is present and acting, no business performed or act done is valid as an act of this corporation. Whenever a vacancy occurs in the office of Director, such vacancy shall be filled by an appointee of the Board.

Sec. 2. Immediately upon the adoption of these By-Laws, the Directors elected thereafter, and each year at the time of the first regular meeting of Directors succeeding the annual meetings for the election of Directors, the Directors elected shall organize by the election of a President and a Vice-President, of whom both must be of their number, a Secretary and a Treasurer. The Secretary need not be, but the Treasurer must be a stockholder of this corporation, but the Treasurer must give a bond in an amount to be fixed by the Board of Directors, and the bond must be approved by such Board.

Sec. 3. Regular meetings of the Board of Directors shall be held at the office of this corporation in the said City of ....., on the first Monday of each month, at 10 o'clock A. M., and no notice of such meeting need be given to the Directors, but they shall take official notice of the time of the holding thereof.

Sec. 4. Special meetings of the Board of Directors may be held at any time upon the call of the President, or, in his absence or unwillingness to make such call, upon the call of the Vice-President, and should he be also absent or unwilling to make such a call, upon the call of three Directors. Notice thereof of at least two days, if personal, shall be given to the Directors; and such notices shall be in writing, signed by either the President, Vice-President, Secretary, or the Directors making such call. Service of notice may also be

made by the Secretary addressing such notice to each Director at his postoffice address, and depositing said notice so addressed in the United States Postoffice in said City of ....., the postage to be prepaid thereon, at least three days before the day fixed for said meeting.

Sec. 5. At all meetings of the Directors, the President shall preside; in his absence the Vice-President shall preside, and should he also be absent, the Director who may at such meeting be appointed by the Directors present to act as President pro tem. shall preside.

Sec. 6. A majority of the Directors is a sufficient number to form a Board for the transaction of business, and every decision of a majority of Directors forming such Board, made when duly assembled, is valid as a corporate act.

Sec. 7. The Directors shall have full power and authority to execute promissory notes of the corporation, with or without interest, and at such rate of interest as they may determine; they may execute interest-bearing bonds of this corporation, the amount and rate of interest of said bonds and notes, and the time when payable, to be left in their discretion, and secure the payment of any such promissory notes and bonds by mortgage upon the property of the corporation, such mortageges and bonds to be with or without stringent clauses, and clauses for attorney's fees and other matters, all at their discretion. They shall have full power and authority to purchase, sell and let real and personal property, (or whatever the general purposes of the corporation, as set forth in the articles, which may be very properly here copied in full), and to that end, and to do and perform all other acts as are stated in the articles of incorporation in that clause thereof giving the purpose for which this corporation is formed, and perform and transact all other business and acts which this corporation, by the laws of this State, is permitted to transact and perform.

Sec. 7. The Directors shall have power to employ engineers, attorneys, superintendents, and such other subordinate officers, agents and laborers as in their judgment the business of this corporation may require, prescribe their duties, and

allow them suitable compensations, and the power given to corporations by the statutes of this State, are hereby delegated to and conferred upon them.

ARTICLE IV.

Duties of the President and Vice-President.

Section 1. The President, or in his absence the Vice-President, shall sign all certificates of stock, preside at all meetings of stockholders and Board of Directors, and shall do, perform and render such acts and services as the Board of Directors shall prescribe and require, and shall receive such compensation for services as may be fixed by the Directors. Such compensation may be increased or diminished at any time, at the will and pleasure of the Directors.

ARTICLE V.

Duties of the Secretary.

Section 1. The Secretary shall countersign all certificates of stock, be the custodian of the seal of the corporation, and affix the same to all certificates of stock, papers and instruments requiring such seal; he shall keep the minutes and records of this corporation, the books prescribed by the statutes of this State, and such other books as the directors may require to be kept by him. He shall attend all meetings of directors and stockholders and render such other services as the directors may impose upon him. He shall hold his position during the pleasure of the directors. His compensation shall be fixed by the directors, and the same may be increased or diminished at the pleasure of the directors.

ARTICLE VI.

Duties of Treasurer.

Section 1. The Treasurer shall perform such duties as the Directors may impose upon him. He shall report the state of the finances of the corporation at each monthly meeting of the Directors, and at each annual meeting of the stockholders. He shall hold his office at the pleasure of the Directors, and may be removed whenever they determine upon such removal. He shall receive such compensation as the Directors

may allow, which may be increased or diminished at their pleasure.

ARTICLE VII.

Miscellaneous Matters..

Section 1. Certificates of stock shall be issued to the stockholders whenever and upon such terms and conditions as may be determined upon by the Directors.

Sec. 2. The by-laws may be altered, amended or repealed at any of the regular or special meetings of the stockholders. Should any alteration, amendment or repeal be contemplated at any of the regular meetings, no notice of such alteration, amendment or repeal need be given; but if contemplated at any of the special meetings, notice thereof must be given in the same manner and for the same time as required for annual meetings of stockholders.

Sec. 3. Every Director shall be allowed the sum of $5.00 per day and his legitimate expenses for each day while actively engaged in the affairs of the corporation.

Sec. 4. At all Directors' and stockholders' meetings, Cushing's Manual shall establish the rule of procedure unless otherwise provided by these by-laws.

.....

The foregoing are forms of the by-laws as adopted before entry in the Book of By-Laws. When entered, a certificate should be appended, signed by the Directors and attested by the Secretary, under the corporate, seal, as follows :

Form 51.—Certificate to By-Laws.

.....

We, the undersigned Directors of the .....
.....Company, do hereby certify that the above and foregoing by-laws, which appear in this by-law book, are the full, true and correct by-laws of said company as adopted at a meeting of the stockholders thereof, held for that pur-

pose, after due notice given therefor on the 15th day of March, A. D. 1904.

In Witness Whereof, we have hereunto affixed our hands and caused the seal of said corporation to be affixed thereto.

E. P. JONES,
M. L. BENNETT,
JAMES WILLARD,
ASA ROBERTS,
A. J. KNOX,
JOHN GOODE,
ROBERT LAIRD,
EZRA HALL,
L. L. SIMS,
Directors.

Attest:

J. F. WESTON,
Secretary.

(Corporate Seal.)

.....

Form 52.

.....

BY-LAWS of a CO-OPERATIVE ASSOCIATION.

ARTICLE I.

Name.

The name of the Association shall be the "Advance Co-operative Bakery."

ARTICLE II.

Corporate Powers.

The corporate powers of this Association shall be vested in a Board of seven Directors, who shall be members in good standing, holding membership certificates in the Association,

and four Directors shall constitute a quorum for the transaction of business.

ARTICLE III.

Objects.

The objects of this Association are the economical, intellectual and moral elevation of the working classes in general by co-operative enterprises, and to further the interests of organized labor especially, and such other objects as are stated in the Articles of Incorporation of this Association.

ARTICLE IV.

Membership.

Any person is eligible to membership in this Association who is a member in good standing of a trades union at the time of his application, or who is known to uphold the interests of the working classes and who, upon written application, has received three-fourths of the votes of members present at a regular or special meeting of the Association.

ARTICLE V.

Election of Directors.

The Directors shall be elected by ballot, at the quarterly meetings of the Association, to be held on the ..... day of July of each year, to serve for a year and until their successors are elected. Their term of office shall begin immediately after election.

ARTICLE VI.

Vacancies.

Vacancies in the Board of Directors shall be filled by the other Directors in office; and such persons shall hold office until the first meeting of the Association thereafter. Any Director may be removed from office by a two-thirds vote of the members present at any quarterly meeting or special meeting called for that purpose.

ARTICLE VII.

Power of Directors.

The Directors shall have power:

1. To call special meetings of the Association when they deem it necessary. And they shall call a meeting at any time upon the written request of one-third of the members.

2. To appoint and remove at pleasure, by or with the consent or upon the recommendation of the Manager, all officers, agents and employees of the Association, other than the Manager, prescribe their duties, fix their compensation, and require from them security for faithful service.

3. To conduct, manage and control the affairs and business of the corporation, and to make rules and regulations, not inconsistent with the laws of the State of ..... or the By-Laws of the corporation, for the guidance of officers and management of the affairs of the Association.

4. To incur indebtedness. The terms and amount of such indebtedness shall be entered on the minutes of the Board, and the note or obligation, if any, given for the same, signed officially by the Manager and Secretary, shall be binding on the Association.

ARTICLE VIII.

Duties of Directors.

It shall be the duty of the Directors :

1. To cause to be kept a complete record and minutes of all their acts and proceedings and of the proceedings of the Association, and present a full statement at the regular quarterly meeting of the Association, showing in detail the assets and liabilities of the Association, and generally the condition of its affairs. A similar statement shall be presented at any other meeting of the Association when thereto requested by one-half of the members of the Association.

2. To recommend to the Association that dividends be declared out of the surplus profits when such profits shall, in the opinion of the Directors, warrant the same.

3. To supervise all officers, agents and employees, and see that their duties are properly performed; to cause to be issued to the members Certificates of Membership.

ARTICLE IX.

Officers.

The officers shall consist of a President, Secretary, Treasurer and Manager. The President shall be elected at the opening of each meeting of the Board of Directors, and shall hold office until the opening of the succeeding meeting of the Board of Directors, and no longer, unless re-elected. The Secretary and Treasurer shall be elected and hold office at the pleasure of the Board of Directors. The Manager shall be elected by the Association at its regular quarterly meetings to be held on the second Saturdays of January and July of each year. The Board of Directors may, in their discretion, elect or appoint such officers as in their judgment may be deemed necessary, which said officers shall hold office during the pleasure of said Board.

ARTICLE X.

President.

The Board of Directors shall, at their regular meeting, elect one of their number to act as President, and if at any time the President shall be unable to act the Manager shall take his place and perform his duties; the President or officer acting as such as above provided:

1. Shall preside over all meetings of the Association and Directors and shall have the casting vote.

2. He shall sign, as President, all Certificates of Membership; also all contracts and other instruments of writing which shall have first been approved by the Board of Directors, and shall draw checks upon the Treasurer when thereto directed by the Board of Directors.

3. He shall call the Directors together whenever he deems it necessary, and shall have subject to the advice of the Directors, direction of the affairs of the Association, other than those entrusted to the Manager, and generally shall discharge such other duties as may be required by him by the Board of Directors.

ARTICLE XI.

Secretary.

The Board of Directors shall elect a Secretary.

1. It shall be the duty of the Secretary to keep a record of the proceedings of the Board of Directors and of the Association.

2. He shall keep the corporate seal of the Association and the book of blank Certificates of Membership, fill and countersign all certificates issued, and make the corresponding entries in the margin of such book on such issuance; and he shall affix said corporate seal to all papers requiring a seal.

3. He shall keep a proper membership book, showing the date and number of each certificate of membership and to whom issued, and the facts and date of forfeiture, cancellation, or other final disposition of such certificate.

4. He shall keep proper account books, countersign all checks drawn upon the Treasurer, and discharge such other duties as pertain to his office and as are prescribed by the Board of Directors.

5. He shall serve, or cause to be served, all notices required to be served by law or the By-Laws of the Association; and in case of his absence, inability, refusal or neglect so to do, then such notices may be served by any member directed by the President.

ARTICLE XI.

Treasurer.

1. The Treasurer shall receive and account for all the funds of the Association, and, so far as practicable, shall deposit the same in some bank designated by the Board of Directors as a depositary, and pay them out, or cause them to be paid from the depositary, only on the check of the President, countersigned by the Secretary.

2. At each quarterly meeting of the Association he shall submit, for the information of the members a complete statement of his acounts for the past quarter. He shall discharge such other duties pertaining to his office as shall be prescribed by the Board of Directors, and shall give a good and sufficient bond in such amount as may be fixed by the Board of Directors.

ARTICLE XII.

Manager.

The Manager shall hold office for the period of six months after his election, and until the election and qualification of his successor. He shall not be removed from office except by the Association, at a regular meeting, or special meeting called for that purpose, or for the purpose of considering any appeal by him from any order of suspension made by the Board of Directors. The Board of Directors may, for good and sufficient cause, suspend the Manager from office. Upon such suspension the Board of Directors, or some persons designated by them, shall perform the duties of Manager until such suspension is removed or a new manager elected. The Manager may appeal to the Association from such order of suspension and such appeal shall be heard and determined by the Association at its next regular or special meeting, and witnesses may be called and evidence submitted upon the merits of the suspension. Upon such hearing the Association may affirm such suspension and remove the Manager from office and elect his successor or may reverse such suspension and restore him to his office.

It shall be the duty of the Manager:

1. To control and direct all labor, and the transaction and operation of the business generally, including the purchase of necessary material and supplies. The Manager may or may not be a member of the Board of Directors.

2. To make requisitions upon the Board of Directors for necessary funds, stating in general the objects for which the funds are required, and upon such requisition the Board of Directors shall order such funds paid to him by the Treasurer in the usual manner, the amount thereof, however, not to exceed at any time one-half of the amount of the bond to be given by the Manager. The Manager shall give a good and sufficient bond, approved by the Board of Directors, for the faithful performance of his duties in such amount as the Board of Directors shall determine.

3. As far as practicable to make monthly returns to the Board of Directors of all expenditures, with necessary vouchers

and a general statement of the condition of the business and affairs under his supervision. . .

ARTICLE XIII.

Books and Papers.

The books and such papers as may be placed on file by vote of the Association or Directors, shall at all times in business hours, in the presence of a majority of the Board of Directors, and not otherwise, be subject to the inspection of any member of the Association.

ARTICLE XIV.

Certificate of Membership.

Certificates of membership shall be of such form and device as the Board of Directors may elect, and each certificate shall be signed by the President and countersigned by the Secretary, and express on its face its number, date of issuance, and the person to whom it is issued, and shall bear the corporate seal of the Association.

The Certificate Book shall contain a margin, on which shall be entered the number, date, and the name of the person expressed in the corresponding certificate.

ARTICLE XV.

Meetings.

1. The Association shall meet quarterly, in regular session, and such meetings shall be held in the City of ....., County of ....., on the second Saturdays of the months of July, October, January and April of each year, and shall be called by a printed notice signed by the President and Secretary and served in the manner hereinafter directed for the service of notices, to each and all of the members of the Association. Such service shall be made at least seven days prior to the day set for the meeting of the Association, and shall specifically state the hour and place of meeting.

2. No meeting of the Association shall be competent to transact business unless one-fourth of all of the members of the Association are present; but a less number may adjourn from day to day or until such time as may be deemed proper. One-fourth of all the members of the Association shall consti-

tute a quorum for the transaction of business, except where otherwise provided by law or these By-Laws.

3. The Board of Directors shall meet in regular session on the second and fourth Saturdays of each month, at 7 o'clock P. M., at such place as may be designated or selected by the Board of Directors, as the regular meeting place of said Board, and notice of such meeting is hereby dispensed with.

4. The President, or three of the Directors, may call, or cause to be called, special meetings of the Directors at any time, and notice shall be given of such called meeting by leaving a written or printed notice at, or by mailing the same to, the last known place of business or of residence of each Director, at least two days before the holding of said meeting; provided, however, that whenever all of the Directors are present at any meeting, however called, or consent in writing that such meeting be held, the proceedings thereat shall be as valid as through previous written notice aforesaid had been given.

5. Special meetings of the Association may be called by the President whenever he may deem it expedient, and he shall call such meetings when requested to do so in writing, by at least one-third of the membership of the Association. Notice of special meetings of the Association shall be given by the President, or, at his request, by the Secretary, or personal service, (as provided in the following paragraph) of such notice, at least seven days before the day of meeting, upon each of the members.

6. Service of notice upon any director or member may be effected by depositing a written or printed copy of such notice in the United States Post Office of the City of ....., in the State of ....., under cover and sealed, postage prepaid, addressed to each of such members or directors, the length of time prior to the day of meeting thereby called as required by these By-Laws, and the certificate of the President or of the Secretary giving such notice shall be conclusive as to the fact of service.

7. No person shall be competent to sit or act in any

meeting of the Association or to be a member of the Board of Directors, who has not paid his membership fee and received his Certificate of Membership, or who shall be in default for non-payment of any call made upon him as hereinafter stated.

ARTICLE XVI.

Manner of Election and Voting.

At all meetings of the Association, each member, qualified as stated in the last Article, shall be entitled to vote upon all propositions coming before said Association, provided that no voting by proxy shall be permitted, and no member shall be entitled to vote without being actually present at such meeting at the time of voting.

The ballot or votes at elections of directors or other officers shall have written or printed thereon the names of the persons selected by the voter. All such elections shall be by secret ballot. Tellers shall be appointed by the President or presiding officer of the meeting, on such announcement being made, shall declare the person receiving the highest number of votes to be elected as such director or other officr, and such declaration shall be entered upon the minutes of the meeting. No cumulative voting shall be permitted, and such member of the Association shall have but one vote for each director or officer to be elected.

ARTICLE XVII.

Seal.

The Association shall have a common seal, consisting of a circle having on its circumference and face the words, "Advance Cooperative Bakery, ..., incorporated July 12, 1901."

ARTICLE XVIII.

Amendments.

The By-Laws may be repealed or amended, or new By-Laws may be adopted at any regular meeting of the Association or at any other meeting called for that purpose, by a vote of not less than two-thirds of the members of the Association.

ARTICLE XIX.

Membership Fee.

The membership fee is and shall be $6.00, and shall accompany the written application for membership. For the purpose of paying expenses, conducting business, and paying debts, and not otherwise, the Association may, at any quarterly meeting, or at any special meeting called for that purpose, call upon each member for said amount, not exceeding $5.00 in any month, as will be necessary to meet the then present exigency, and no more; provided, that all such calls shall not exceed, in the aggregate, the sum of $45.00 in addition to the membership fee; and provided, further, that any member may, with the consent of the Board of Directors, apply the full amount of $45.00 in addition to the membership fee, into the Association and shall thenceforth be exempt from all such calls; and, in such case, the Board of Directors may allow to such member interest or profit on said money in such amount as they may consider just or the condition of the business will permit. No such call shall be made or levied at any meeting, regular or special, unless a majority of all the members of the Association are present.

ARTICLE XX.

Enforcement of Calls.

When any call shall be made as provided in the last Article, notice thereof shall forthwith be given to each member in the same manner as provided for the service of other notices, and such notice shall designate a time not less than ten days from the date of service of said notice, when such call shall become delinquent; and, if payment of such call be not made before the expiration of said time, said call shall thereupon become delinquent, and said member shall be in default for non-payment thereof. In case default shall be made in the payment of any such call, notice of such default or delinquency shall be given, which notice shall be served in the usual manner, requiring the payment of the

amount of such call within five days from the date of service of said notice, and said notice shall specify the last day on which such payment can be made, and shall further state, that unless payment be made before the expiration of such last day, the membership of such delinquent member shall be forfeited without any further action of the Association or Board of Directors, and that his membership certificate shall thereupon be cancelled upon the books of the Association; and, if such payment be not so made, said membership shall stand forfeited and certificate cancelled; provided, however, that any member whose membership has been forfeited and membership cancelled as aforesaid, may, within six months from the date of such forfeiture, pay to the Association the amount of such call, and all intermedate calls that may be made, together with ten per cent of the amount of all such calls in addition thereof, and upon such payment he shall be restored to all his rights as a member of this Association. If such payments be not made within said time, said member shall thenceforth have no further interest in or connection with said Association. During said period of six months, said member shall have no rights or voice in any of the affairs of the Association.

ARTICLE XXI.

Expulsion.

If the conduct of any member has been injurious to the Association, the Board of Directors, after citing said member, with seven days' notice of hearing, have full power to expel said member, and he shall be and is expelled after being so declared, but said member shall have the right to refuse to draw out his interest, and may appeal to the Association, at its first regular meeting thereafter, from the action of said Board of Directors, and ask that he be reinstated. If the Association, by a majority vote of those present, disapprove of the action of the Board, he shall be reinstated. If expelled, and not reinstated as prescribed, his interest in said Association shall be appraised by the Board of Directors, and shall be

awarded paid, or delivered to him within forty days after such expulsion, or determination of his appeal.

ARTICLE XXII.

Death and Resignation.

The Directors shall determine upon the mode and manner of the settlement of a deceased member's account and the appraisement and time of payment in such cases. The Board may also provide for the mode and manner of succession of membership and transfer of membership certificates, provided that no transfer of membership certificates shall be binding upon th Association unless the person to whom such membership certificate was transferred shall make application for membership in the Association in the usual manner and be balloted for and elected in the same manner as upon the election of new members.

ARTICLE XXIII.

Profits.

A possible overplus in the business shall be used, one-half for the extension of the business. one-fourth for the moral, physical and intellectual elevation and welfare of Trades Unions and labor in general, and one-fourth for the general welfare of the members of the Association. The Association may, at any regular meeting, upon the recommendation of the Board of Directors, declare a dividend and direct that such profits be paid or used in the proportions above stated. Except as to that portion of the profits to be paid to the members of the Association, the Board of Directors shall have the power to designate in what manner and for the benefit of what association or person, such profits shall be used.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, being all of the members of the Advance Co-operative Bakery, hereby assent to the fore-

going By-Laws, and adopt the same as the By-Laws of said Association.

In Witness Whereof, we have hereunto subscribed our names, this 15th day of May, 1904.

W. R. BENT,
ENOS RASSIER,
THOMAS REID,
GEORGE STANNARD,
H. L. HENRICHSEN,
LOUIS LOEB,
PETER KEITHLEY,
Members.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, Directors and Members of the Association known as the "Advance Co-operative Bakery," do hereby certify that the above and foregoing By-Laws were duly adopted as the By-Laws of said Association on the 15th day of May, 1904, and that the same do now constitute the By-Laws of said Association.

(Names as above.)

Attest:
E. J. RUNYON,
Secretary.

(Corporate Seal.)

.....

§ 59. By Whom Enacted, Amended and Repealed.

The primary source of all authority in a corporation being the members at large, they alone have authority to enact by-laws, in the absence of a provision in the general law, or in the charter, placing it in the hands of a select body, for instance, the Board of Directors. The members or stockholders may, in

some of the States, confer upon the directors power to amend the by-laws ; and this necessarily carries with it authority to enact new ones. Where, however, power to make by-laws on specified subjects is thus conferred upon the directors, either directly by law or through the membership, such by-laws must be confined to the subjects embraced within the scope of that authority. The body of members at large retains incidental power to make by-laws as to matters not so specified. And even though authority to alter or amend by-laws may be conferred upon a board of directors, they have no power to repeal, alter or disregard a by-law containing a limitation upon their power. Aside from such instances of specially delegated powers, the general rule is that the same body which enacts a by-law has power to repeal it, in the same manner and by the same vote as that by which it was enacted.

But not even the membership have power to alter a by-law to the extent of affecting the contracted relative value of a share, reserved when the share was sold to the stockholder, so as to enter into and form a part of the contract. An alteration is a pro tanto repeal ; but no corporation can repeal a by-law so as to impair rights which have been given and become vested by virtue of the by-laws afterwards attempted to be repealed.[13] The alteration of a by-law is but the making of another upon the same matter. If the first must be reasonable and in accord with principles of law, so must that which alters it. If, then, the power is reserved to alter, amend. or repeal, and that reservation enters into a contract, the power

reserved is to pass reasonable by-laws agreeable to law. But a by-law that will disturb a vested right is not such.[14]

As previously stated, it is the exclusive province of the highest authority in a corporation to enact by-laws; and in the absence of a statute authorizing directors to enact by-laws, the power can only be exercised by stockholders in a capital stock corporation, and by the members in a corporation organized for other purpose than for profit.[15] Nor does a statute placing the affairs of corporations under the management of their directors alone give the directors power to pass by-laws.[16] The foregoing principle has no application, however, where the directors unanimously adopting a code of by-laws, as such, own all the stock, since mere informalities will be disregarded.[17] And the same principle would apply where directors adopting by-laws of a corporation organized not for profit constitute the entire membership. And, in general, it may be stated that where the persons adopting by-laws have authority to adopt them, it is immaterial in what name they do it.

Under the statutes of several States, the Board of Directors may amend the by-laws upon a resolution in writing, signed by a certain proportion of the stockholders without a meeting of the latter. Such resolution may be in the following form:

Form 53.

.....

Resolved, that Section ..... of Article ..... of the By-Laws of the New Era Printing Company be amended, so that as amended it shall read as follows:

(Insert the section as amended.

And be it further resolved that the Board of Directors of said corporation be and they are hereby requested, directed and authorized to make said amendment, and that this resolution, with our signatures, representing two-thirds of the subscribed capital stock of said corporation, be presented said Board for that purpose.

Dated March 1, 1904.

Names.	No. of Shares
E. P. Jones.....	10 shares.
W. L. Bennett.....	25 shares.
Asa Roberts.....	400 shares.

.....

The Board of Directors will then, at a regular meeting, or at a meeting specially called for the purpose, pass a resolution of which the following is a sufficient form :

Form 54.

.....

Whereas, a resolution bearing date of March 1, 1904, signed by the holders of more than two-thirds of the subscribed capital stock of this corporation, has been presented to the Board of Directors of the New Era Printing Company, authorizing and directing that Section ..... of Article ..... of the By-Laws be amended ;

Now, therefore, be it resolved, in compliance with said resolution, request, authorization and direction therein contained, that said Section ..... of Article ..... of the By-Laws of this corporation be amended to read as follows :

(Here insert it.)

And the Secretary is hereby directed to copy said Section as it is amended, in the book of By-Laws immediately following the original By-Laws, and to properly certify the same.

.....

§ 60. By-Laws Informally Adopted.

By-laws informally adopted may be ratified, or become binding, as by-laws by usage and uniform recognition as by-laws, for a long period.[18] And the adoption by a Supreme Lodge of a by-law adopted without authority by a subordinate lodge may render it effective.[19] And though a statute provide only for the adoption of by-laws after organization, still, though some of the stockholders sign the by-laws before organization, and even before incorporation, yet it constitutes an agreement which the corporation can enforce.[20] And a corporation may, by acting under a by-law, irregularly adopted, be estopped, as against one who had no notice of any defect from asserting its invalidity.[21]

And the interpretation of a by-law may undoubtedly be affected to some extent by usage.[22]

The doctrine of estoppel in pais has an important application with reference to the binding effect of by-laws, informally adopted. If members attend the meeting at which the question of their adoption is passed upon, remain silent, and do not then and there protest, they are estopped from afterwards claiming that less than the required number of votes were cast in favor of their adoption.[23] So, a member of a mutual insurance company will be estopped from questioning the validity of by-laws existing at the time he became a member, on the mere ground that they were not properly adopted.[24]

§ 61. By-Laws of Mutual Benefit Societies.

The by-laws of mutual benefit associations, in con-

nection with the certificates of membership, determine the rights of the members and of the associations to which they belong, and may be enforced by the parties and beneficiaries, according to their respective rights, as therein provided.[25]

While a mutual benefit society cannot change its by-laws arbitrarily, so as to repudiate an obligation created by a policy of insurance, yet, where a change is regularly made, and the motive which influences it is an honest one, promotive of the welfare of the society, and the members are all given an opportunity to avail themselves of the change, no actionable wrong is thereby done to them or to their beneficiaries.[26]

§ 62. Relation of By-Laws to Constitution of Corporations Not Organized for Profit.

Corporations incorporated for other than profitable objects, for instance, those of a social, benevolent and political character, often enact a constitution distinct from by-laws, and some of them have, in addition, rules of order.

Now, a constitution, in so far as it declares the purposes and principles by which its members are actuated, is no part of the by-laws ; and, in so far as it limits the powers of the body as a whole, or the conduct and relations to it and to each other, of the membership, is nothing more than by-laws. But there is usually this difference: the constitution cannot be suspended or amended without a prescribed procedure, and the vote of a larger proportion of the members present and voting than with

respect to the by-laws. A common provision is the requirement of notice at a previous meeting in order to amend, repeal, or suspend a constitutional provision ; whereas, it is often provided that a by-law may be suspended upon a mere motion without previous notice. Notwithstanding this distinction, however, such a constitutional provision is no more, when compared with the charter, than a by-law under an inappropriate name.[27]

§ 63. Adopting By-Laws Without Meeting.

It is sometimes provided by statute that, by unanimous consent in writing, and sometimes by consent of less than all the members or stockholders, by-laws may be adopted without a meeting. But where that course is pursued, great care should be taken that the written consent of every member is obtained, because failure herein as to one member, however small his interest, invalidates the entire proceeding. Such method being a departure from the usual method, should conform exactly to the general law or charter provision. Such statutes, being in derogation of common law, are strictly construed. In order to avoid dispute and preserve evidence of compliance with the law, the written consent should be explicit and should be signed and acknowledged before an officer having a seal. Such consent may be as follows:

Form 55.

.....

We, the undersigned stockholders (or incorporators) of the New Era Printing Company, owning and holding in our names all the subscribed capital stock of said corporation,

having read and fully considered the within (or foregoing) draft of a code of By-Laws for said corporation, hereby adopt the same.

Dated March 1, 1904.

Names.	No. of Shares.
E. P. Jones.....	20
M. L. Bennett.....	50
Asa Roberts	400
James Willard	15
A. J. Knox.....	15

.....

In a few States, a given proportion of the incorporators, less than all, may adopt by-laws by written consent. The form is the same as the foregoing, the only difference being that instead of the recital that the signers own and hold all the subscribed stock (or are all the incorporators), they recite that they own and hold more than two-thirds, or constitute more than two-thirds of the incorporators.

§ 64. By-Laws Must Be Recorded—How Book of By-Laws to Be Kept.

In order to be valid, by-laws must substantially conform to all the statutory or charter provisions bearing on the subject in the State where the corporation is formed ; and where a statute requires by-laws to be written in the corporate records and attested, by-laws though written in the records, if not attested, are invalid.[28]

In the absence of a statute on the subject, it cannot be said that by-laws properly adopted would not be valid and enforceable merely because not entered in a book. Statutes are generally found, however,

providing that a book shall be kept, to be known as the "Book of By-Laws," that all by-laws shall be recorded therein, and that no by-laws shall take effect until so recorded.

The prevention of fraud, as well as many considerations of convenience, would seem to render necessary the keeping of such a book and the entry therein of by-laws and amendments thereof, even in the absence of such statutes. The original set of by-laws should be entered with proper headings as adopted, marginal space being left for annotations. In case of amendment or repeal, a marginal note to that effect should be made with red ink, referring to the page where the amended by-law may be found, also giving the date of adoption of the amendment and the page of the minute book which shows by what action, whether of the members or of the Board of Directors, the amendment was made. At such subsequent page of the by-law book, the entire section of the by-laws as amended should be recorded. If the amendment amounts to a revision of an entire article, or of an entire code of by-laws, such article, or the entire code, should be recorded anew. In case of a general revision and re-adoption of by-laws, a brief record thereof should be made above the caption of the original by-laws, and a reference given to the subsequent page where the revised code begins.

§ 65. Membership Chargeable With Notice of By-Law Provisions.

By-laws regularly adopted, and not subject to any of the objections which render them inherently in-

effective, are obligatory upon all the stockholders or members, and they are conclusively presumed to have notice of all valid by-laws.[29] Such by-laws are elements of the member's contract of membership in the corporation, and likewise affect all his dealings with the corporation. They determine the extent of his duties, rights and liabilities.[30]

§ 66. By-Laws Not Binding Upon Strangers to the Corporation.

By-laws of private corporations are not in the nature of legislative enactments, so far as third persons are concerned. They are mere regulations of the corporation for the control and management of its own affairs. They are self-imposed rules, resulting from an agreement or contract between the corporation and its members, to conduct the corporate business in a particular way. They are not intended to interfere in the least with the rights and privileges of others who do not subject themselves to their influence. It may be said with truth, therefore, that no person not a member of the corporation, can be affected in any of his rights by a corporate by-law of which he has no notice.[31]

A by-law of a bank that all payments made and received must be examined at the time, does not prevent a stranger dealing with the bank from showing afterwards that there was a mistake in his deposit account. Any different construction would render the by-law unreasonable.[32]

By-laws preserving a lien upon the shares for unpaid subscriptions, prior to the issuance of a certifi-

cate as full paid, are undoubtedly valid and enforceable even against strangers purchasing such shareholding interests. But by-laws imposing a lien after the issue of such a certificate, and those imposing other onerous conditions and restrictions upon transfers, are ineffective as against bona fide assignees of the stock. And it is doubtful if a stockholder even is bound by resolutions, or even by-law regulations, of which he has no actual notice, when he is dealing with the corporation as a mere customer.[33]

§ 67. Whether Notice of Intention to Amend Required.

It has been a disputed question whether by-laws may be altered in material respects at a regular or annual, meeting, without notice to the members or stockholders, of an intention to make such alterations. Of course, no such alteration can be made at a special meeting without notice ; and the sounder view is that no radical change in the by-laws should be made at a regular meeting without notice. From experience and observation, it is well known that at regular annual meetings only the general routine business of the corporation is transacted. A majority of the stockholders rarely attend in person. Their proxies are given to attorneys to vote for them on the usual and ordinary questions and matters that arise.

The settled rule appears to be that it is unnecessary to notify the shareholders of the particular business to be brought before an ordinary general meeting, unless it be of great importance and of an extraordinary character. In the latter case, notice must

be given of such business ; for instance, the election or removal of an officer, the making, materially altering or repeal of a by-law, or any act of similar importance on any day not expressly set apart for that particular transaction.[84]

It seems to be well settled that important by-laws cannot be enacted, or material changes made in those already in force, at a regular meeting, without notice of such action being given to the stockholders.

The corporation usually passes from one year of its existence into the next with the by-laws regulating its business and management unchanged. If some of the stockholders contemplate action of an unusual or extraordinary character, such, for instance, as a change in the number of directors, by amendment of the by-laws, it is but reasonable that their associates should have notice of it.

§ 68. Enforcement of By-Laws.

The enforcement of by-laws is left by the law largely to be regulated by the majority operating through the corporate machinery. It is only when the validity of a transaction alleged to be violative of a by-law is the subjct of litigation that a court passes upon the question.

The resulting prejudice to corporate interests is a constant incentive to the due observance of by-law provisions. Transactions directly contrary to these may be set aside at the suit of any stockholder, in an action brought for that purpose, and sometimes, even creditors may have them annulled.

Reasonable penalties may be imposed and collected

for infractions of by-laws, though judicial remedies are seldom invoked for that purpose. In the case of a dividend paying corporation, it has the remedy for such violations in its own hands. It may deduct the amount of fines and penalties from dividends payable to the violator.

The finable offenses should be particularly specified in the by-laws. Statutes usually confer the power for this purpose upon the body having authority to enact by-laws. Penalties so imposed cannot, however, extend beyond a reasonable pecuniary sum. They must not amount to a restraint of liberty, or a forfeiture of corporate interests, except as to the extent and by the procedure authorized by statute. Nor can the power to enact by-laws be exercised in such manner as to cause great vexation and unnecessary inconvenience. Such by-law will be deemed unreasonable, and for that reason in conflict with the spirit of the law conferring authority to enact by-laws. Nor can the corporation enforce a by-law requiring formalities so extraordinary as to amount to a material inconvenience in the transfer of shares.

Many acts by corporate officers are made punishable by statute, but the same acts may be made subjects for fines under by-law provisions.

It would, in most cases, be impossible to enforce by-laws without the enforcement of penalties for their non-observance. The penalty which may be imposed by the terms of by-laws may be either positive or negative in character ; that is, it may either consist of the imposition of pecuniary fines or of the withholding of benefits and privileges. The latter may be

either temporary, as in the case of suspension for a limited time, or permanent, as in case of expulsion.[35] But all penalties must be reasonable and bear a just proportion to the offense.[36]

A corporation has no implied, or inherent, power to declare a forfeiture of the shares owned by a delinquent shareholder. The right must be conferred by statute, if it exist at all.[37]

Pecuniary penalties may be collected either by action or by deducting them from the dividends of offending members.[38]

§ 69. Power to Enforce Conditions.

A corporation may be empowered by its charter or general law to not only regulate, but also to control his transfer of stock, and to enact by-laws prescribing the conditions to be complied with in order to constitute a valid transfer ; and when so empowered, it may refuse to register transfers made otherwise than in the manner pointed out. It is both convenient and necessary that the officers have a record by which to legally test all claims of membership against the company, for the purposes of making assessments, holding elections, and paying dividends. Such by-laws are so salutory and conservative of public as well as corporate interests that the absence of some such provisions in the by-laws would, in the case of a corporation doing an extensive business, be exceptional. But if a by-law amounted to a virtual prohibition upon the transferrability of shares, as if it assumed to prescribe the consideration for the transfer, or to designate to whom it should, and should not, be made, it would be void.

§ 70. Regulations Not Formally Adopted.

A regulation may become established by usage and long acquiescence, so as to have all the force and effect of a by-law. Where a particular usage is observed by all engaged in any particular class of business, conducted by a corporation, a requirement or regulation may be binding upon all dealing with it, whether formally adopted as a by-law or not.

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[1] Sutton's Hospital Case, 10 Coke 31a; London v. Vanacre Ld. Raym. 498; Feltmakers v. Davis, 1 B. & P. 100; Kalff v. St. Paul Fuel Exch., 48 Minn. 215; People v. Medical Soc., 24 Barb. (N. Y.) 570; Budd v. Multnomah St. Ry. Co., 15 Or. 413; Northern Liberties v. Northern Liberties Gas Co., 12 Pa. St. 318; Hibernia F. Engine Co. v. Com., 93 Pa. St. 264; St. Luke Church v. Matthews, 4 Desaus (S. C.) 578; Palmetto Lodge, etc., v. Hubbell, 2 Strohl L. (S. C.) 457; Cross v. West Va. Centr., etc., R. Co., 37 W. Va. 342; Dickenson v. Chamber of Commerce, 29 Wis. 45; McArthur v. Green Bay, etc. Canal Co., 34 Wis. 139.

[2] Kent v. Quicksilver Mining Co., 78 N. Y. 159.

[3] Rex. v. Cutbush, 4 Burr. 2204; Kent v. Quicksilver Mining Co., 78 N. Y. 159; Railway Co. v. Allerton, 18 Wall. 233.

[4] Supreme Commandery v. Ainsworth, 71 Ala. 436; People's Home Sav. Bank v. Superior Court, 104 Cal. 649; State v. Tudor, 5 Day (Conn.) 329; American L. S. Conn. Co. v. Chicago Live Stock Exch., 143 Ill. 210; Darkee v. People, 155 Ill. 354; Wayne Pike Co. v. Bosworth, 91 Ind. 210; Sayre v. Louisville Benev. Assn., 1 Dur. (Ky.) 143; Austin v. Rutlinger, 91 Ky. 333; German Evang. Cong. v. Pressler, 17 La. Ann. 128; Kennebec, etc., R. Co. v. Kendall, 31 Me. 470; Carne v. Brigham, 39 Me. 35; Traders, etc., Ins. Co. v. Brown, 142 Mass. 403; Pulford v. Fire Department, 31 Mich. 458; Taylor v. Griswold, 14 N. J. L. 222; People v. Medical Soc., 24 Bash. (N. Y.) 570; Matter of Long Island R. Co., 19 Wend. (N. Y.) 37; State v. Williams, 75 N. C. 135; State v. Cincinnati, 23 Ohio St. 445; People v. Saint Franciscus Benev. Soc., 24 How. Pr. (N. Y.) 216; Kalff v. St. Paul Fuel Exch., 48 Minn. 215; Goddard v. Mer. Exch., 78 Mo. 609

[5] Supreme Commandery, etc., v. Ainsworth, 71 Ala. 436; People v. Crockett, 9 Cal. 113; Howard v. Savannah, T. U. P. Charl. (Ga.) 173; Illinois Conf. Female College v. Cooper, 25 Ill. 148; Presbyterian Mut. Assur. Fund v. Allen, 106 Ind. 593;

Supreme Lodge, etc., v. Knight, 117 Ind. 489; Supreme Council. etc., v. Forsinger, 125 Ind. 52; Hamilton Mut. Ins. Co. v. Hobart, 2 Gray (Mass) 543; Becker v. Farmers' Mut. F. Ins. Co., 48 Mich. 610; Grand Lodge, etc., v. Sater, 44 Mo. App. 445; Great Falls Mut. F. Ins. Co. v. Harvey, 45 N. H. 292; Poultney v. Bachman, 31 Hun. (N. Y.) 49; Cox v. Farmers' Mut. F. Assur. Assn., 48 N. J. L. 53; Wist. v. Grand Lodge, etc., 22 Or. 271; Becker v. Berlin Ben. Soc., 144 Pa. St. 292; Nat. Mut. F. Ins. Co. v. Yeomans, 8 R. I. 25; Fugure v. St. Joseph Mut. Soc., 46 Vt. 362; Morrison v. Wisconsin Odd Fellows' Mut. L. Ins. Co., 59 Wis. 162.

[6] Becker v. Farmers' Mut. F. Ins. Co., 48 Mich. 610; Illinois Conf. Female College v. Cooper, 25 Ill. 148.

[7] Pulford v. Fire Department, 31 Mich. 458.

[8] Stohr v. San Francisco Mut. Fund Soc., 82 Cal. 557.

[9] Gunmakers' Society v. Fell, Willes 384; Case of Tailors of Ipswich, 11 Coke 53; Thomas v. Musical Mut. Protec. Union, 49 Hun. (N. Y.) 171; Bailey v. Master Plumbers, 103 Tenn. 99; Sayre v. Louisville Union Benev. Assn., 1 Dur. (Ky) 143; Huston v. Rentlinger, 91 Ky. 333; People v. Chicago Live Stock Exch., 179 Ill. 556.

[10] State v. Milwaukee Chamber of Commerce, 47 Wis. 683.

[11] McFadden v. Los Angeles County, 74 Cal. 571.

[12] Black v. White Smith's Soc. v. Vandyke, 2 Whart. (Pa.) 311; Cudden v. Estwick, 6 Mod. 124; Bank of Holly Springs v. Parson, 58 Miss. 435; Morgan v. Bank of North America, 8 Searg. T. R. (Pa.) 88.

[13] Kent v. Quicksilver Min. Co., 78 N. Y. 159.

[14] See Gray v. Portland Bank, 3 Mass. 363.

[15] Morton Gravel Road Co. v. Wyseng, 51 Ind. 12; State Savings Assn. v. Nixon Jones Printing Co., 25 Mo. App. 642; Watson v. Sidney F. Woody, etc., Co., 56 Mo. App. 145; Hughes v. Wisconsin, etc., L. Ins. Co., 98 Wis. 292.

[16] North Milwaukee Town Site Cor. Bishop, 103 Wis. 492.

[17] State Sav. Assn. v. Nixon-Jones, etc. Co., 25 Mo. App. 642.

[18] Lockwood v. Mechanics' Nat. Bank, 9 R. I. 335; Kent v. Quicksilver Min. Co., 78 N. Y. 159; State v. Curtis, 9 Nev. 335; Hagerman v. Ohio B. & S. Assn., 25 Ohio St. 186; Marsh v. Mathias, 19 Utah 350.

[19] Supreme Lodge K. of P. v. Kutscher, 179 Ill. 340.

[20] Vercoutere v. Golden State L. Co., 116 Cal. 410.

[21] Lockwood v. Mechanics Nat. Bank, 9 R. I. 308.

[22] Henry v. Jackson, 37 Vt. 431.

[23] Richardson v. Union Congregational Soc., 58 N. H. 188.

[24] Pfister v. Genvig, 122 Ind. 567.

[25] E. Union Mut. Assn. v. Montgomery, 70 Mich. 587;

Arthur v. Odd Fellows, etc., Assn, 29 Ohio St. 557; Independent Order of Red Men v. Schmidt, 57 Md. 106.

[26] Supreme Lodge K. of P., 117 Ind. 497; Wist. v. Grand Lodge A. O. U. W., 22 Or. 608.

[27] See Supreme Lodge K. of P. v. Knight, 117 Ind. 495; Supreme Lodge K. of P. v. Kutscher, 179 Ill. 340; Dornes v. Supreme Lodge K. of P., 75 Miss. 466.

[28] O'Donell v. Ontario, etc., Co., 11 Up. Can. Q. B. 267; See also Chapman v. Doray, 89 Cal. 52.

[29] Brent v. Washington Bank, 10 Pet. (U. S.) 614; Treadway v. Hamilton Mut. Ins. Co., 29 Conn. 68; Supreme Lodge, etc., v. Knight, 147 Ind. 496; Walsh v. Aetna L. Ins. Co., 30 Ia. 145; Frank v. Morrison, 58 Md. 423; Mitchell v. Lycoming Mut. Ins. Co., 51 Pa. St. 402.

[30] Wist v. Grand Lodge A. O. U. W., 22 Or. 608.

[31] Holly Springs Bank v. Pearson, 58 Miss. 421.

[32] Mechanics, etc., Bank v. Smith, 19 Johns (N. Y.) 115.

[33] See Pearsall v. Western Union Tel. Co., 124 N. Y. 256; Rice v. Peninsular Club, 52 Mich. 87; Flint v. Pierce, 99 Mass. 68; Hill v. Manchester, etc., Co. 5 Barn & Adal. 866.

[34] Bagley v. Reno Oil Co., 201 Pa. 78.

[35] Palmetto Lodge v. Hubbell, 2 Strobh. (S. C.) 457.

[36] See Cahill v. Kalamazoo Mut. Ins. Co., 2 Doug. (Mich.) 138.

[37] Matter of Long Island R. Co., 19 Wend. (N. Y.) 37; Westcott v. Minnesota Min. Co., 23 Mich. 163; Hill v. Nisbet, 100 Ind. 341; Williams v. Lowe, 4 Neb. 382; Budd. v. Multnomah St. R. Co., 15 Or. 413.

[38] See Graves v. Colby, 9 Adal. & E. 356; Feltmakers v. Davis, 1 Bos. & P. 98; Child v. Hudson's Bay Co., 2 P. Wms. 208.

CHAPTER VII.

Stock and Stock Certificates.

71. General Consideration of Capital Stock—Division into Common and Preferred.
72. Interest Bearing Stock.
73. Meaning of Full Paid, Un-issued, Over-issued, and Watered Stock Explained.
74. Treasury Stock Defined.
75. Stock Subscriptions.
76. Stock Certificates.
77. Increase and Diminution of Capital Stock—Action by Stockholders.

§. 71. General Consideration of Capital Stock—Division Into Common and Preferred.

The phrase "capital stock," as employed in acts of incorporation, is never used to indicate the value of the property of the company. It is very generally, if not universally, used to designate the amount of capital to be contributed by the stockholders for the purposes of the corporation. The amount thus contributed constitutes the capital of the company. The "value" of the stock may be greatly increased by surplus profits, or diminished by losses, but the amount of the capital stock remains the same.

The articles must state the amount of the capital stock and the number of shares into which it is divided. For convenience, the by-laws often contain substantially the same language. If any preferred stock is to be issued, the articles, as well as the by-laws, should make provision for it.

The capital stock represents all the pecuniary in-

terests which the members have in the corporation. Its business would be of no interest to them except for the shares of stock held by them, each representing a fractional part of all the property owned by the corporation. Hence, the statutes, charter, provisions and by-laws dealing with stock and stockholders are of great importance, after the corporation has been organized, by-laws have been adopted, and a stock book procured.

In a few States are statutes authorizing a preference among members with respect to participation in the profits. Such preference is given and secured by dividing the stock into two kinds, called "common" and "preferred," the holders of the latter being entitled to stated dividends out of any profits which may be earned, even though their payment leave nothing to distribute as profits to the holders of the common stock. Such an arrangement would be invalid in the absence of statutory sanction or unanimous consent of the holders of common stock, since at common law each and every member stands upon an exactly equal footing.

Inasmuch as the division of profits is a matter with which none other than the stockholders have to do, so long as the capital is not diminished, nor any outside interest prejudiced, the issue of preferred stock may be provided for in the by-laws, if all who have subscribed the articles consent thereto. But their consent should appear of record, either by a writing entered at the meeting at which the by-laws are adopted; or they may ratify such provision at a subsequent meeting. It is thought that the mere adoption of by-

laws should not be binding upon incorporators not consenting, though they had the statutory notice. Undoubtedly, however, provisions for the issue of preferred and guaranteed stock may be embodied in the charter or articles and thus bind all the incorporators and future members.

Preferred stock is sometimes spoken of as guaranteed stock. But, unless otherwise provided, the preference given to stock, by reason of which it derives the designation "preferred," is always guaranteed. That is to say, if for any reason the preferential dividends are not paid in any one year, they accumulate, and are payable, along with the preferred dividends of subsequent years, out of the first available profits, and to the exclusion of the common stock. A variety of provisions pertaining to preferred stock are to be seen in the constating instruments of corporations. Sometimes the preferred stock is only allowed to participate in the profits to the extent of the preference given it, and so, if the business turns out to be very profitable, it may happen that the common stock commands a higher price in the market than that which was intended to be preferable. Again, it may be provided that the preferred shall be paid a certain per cent. dividend, after which the common shall be paid a like dividend, and that then the two shall share proportionately to their par value in any remaining undistributed profits. In that case the market value of the preferred will be much above that of the common. Still greater will be the discrimination in favor of the preferred where the latter directly and immediately shares with the common in the profits, after

receiving the preferential dividend. The statutes of some of the States withhold from holders of preferred stock the right to vote at corporate meetings. Even in the absence of such provisions, it is thought that the same result could be accomplished by unanimous consent of the stockholders, or by a definite provision to that effect in the articles. It is a prudent arrangement and salutory precaution, as a little reflection will disclose. Without it, it would usually be within the power of even a minority of preferred stockholders, standing together, to so manipulate their holdings as to "freeze out" enough common stock to give them absolute control. The holder of preferred stock is not entitled to dividends unless there are profits after payment of all accrued indebtedness. An agreement to that effect would not bind dissenting stockholders or creditors.

It is stated above that there is no such thing as guaranteed stock distinct from preferred stock, from the standpoint of the same corporation. While that is true, stock of one corporation may be, and often is, guaranteed, with respect to the receipt of dividends, by another corporation. But such a transaction is not germane to the present discussion.

The rights of preferred share-holders must usually be determined by the language of their certificates. Such shares are shares of the capital stock of the company, and the fact that they are given a preference in the division of profits does not permit preferred shareholders to assume the attitude of creditors of the corporation. Until creditors are paid, there are no profits; therefore, no fund to which their prefer-

ential rights over holders of common stock can attach. Claims of stockholders, as such, on the "corpus" of the property of the company in which they are stockholders, do not arise until the debts of the company are paid. Until then the shares confer rights merely as regards profits and voting power.[1]

§ 72. Interest-Bearing Stock.

Interest-bearing stock is but another term to describe preferred stock. A corporation sometimes gives a preference by issuing to a certain class of shareholders ordinary stock containing a promise to pay interest on the par value thereof. Such contract has the same effect, to the extent of the preference as an obligation to give a preference in the matter of dividends, and is enforceable in like manner. The interest can only be paid from profits. Any promise to pay interest, except from profits, renders the promise void, at any rate as to creditors prejudiced thereby.

§ 73. Meaning of Full Paid, Un-issued, Over-issued, and Watered Stock Explained.

Stock is said to be "full paid" when nothing remains due on it from the holder of it to the corporation. The power to accept property or services in payment for stock is given by statute in most of the States. It would probably exist without statutory authority, if it did not interfere with the rights of existing creditors.

The term "un-issued stock" is used to denote the margin between stock already issued and the amount

which the corporation may still issue under its charter or articles. It is not treasury stock, nor an asset of the corporation, nor can it be voted, assessed or taxed.

"Over-issued stock" is stock issued when prior issues equal or exceed in the aggregate the entire amount provided for in the charter or articles. Such issues are invalid when brought in question by creditors injured thereby; but may be rendered valid as between the holders thereof and all the other stockholders by unanimous ratification.

The term "watered stock" has no legal significance. The fact that in popular opinion, or in financial circles, stock outstanding contains a proportion of "water," rather than it represents entirely substantial value, furnishes no legal pretext for complaint, unless it can be shown that some legal requirement has been violated in its issue, or that it has been issued without adequate value being received by the corporation. It often happens that the outstanding stock represents much more than the aggregate value of all the corporate assets. But it does not follow that it was not honestly and fairly issued in the first instance.

§ 74. Treasury Stock, Defined.

Stock which has been issued and then purchased by, or donated to, the corporation, is called "treasury stock."

It was held to be against public policy for private corporations to deal in their own shares; but in modern times the rule of the common law on the

subject has been relaxed. Such transactions are now generally upheld, provided the rights of creditors are not infringed. The purchase price must be out of profits. To take money received for other stock and purchase stock for the corporation would necessarily and directly impair its capital. Such stock cannot be voted nor can it receive dividends. To pay dividends upon it would be the corporation "taking money out of one pocket and placing it in the other." Moreover, to that extent, it would reduce the amount payable to individual stockholders. It is an asset of the corporation, however, and may be sold by it as other property. Having been fully paid for in the first instance, that is, when issued to an individual, it retains that character and may be held below par without involving the purchaser in any liability on that account, differing in this respect from stock issued in the first instance for less than its par value.

This power to issue stock and then convert it into treasury stock may often be very beneficially exercised by a corporation. Stock of a corporation formed to develop a new enterprise may issue part or all of its stock for property. The stock having thus become full paid may be donated to the company and sold at less than par, thus furnishing it a working capital. The owners of the property are usually the incorporators, and their faith in the outcome may induce them to donate part of their holdings for this purpose, or the same object may be accomplished otherwise. They may sell all or part of their stock to the corporation, taking in return its promise to pay the purchase price out of future profits. But an agree-

ment binding the corporation to make the payment out of funds derived from the sale of the same identical stock, or other stock un-issued at the time, would be fraudulent as to all non-consenting stockholders and creditors, and would be set aside and restitution or re-payment declared in equity, at the suit of any such interested party.

§ 75. Stock Subscriptions.

The subject of subscriptions to capital stock occupies an important space in any treatise devoted to an elucidation of the principles governing private corporations, as does also the procedure for their enforcement by assessments, calls, forfeiture, etc. Subscriptions taken prior to incorporation are superceded when the articles are signed, and if not so superceded, are non-enforceable at law. Subscriptions made after incorporation are as valid and binding as are other contracts to purchase and pay for property. The remedies by suit and forfeiture of the subscriptions are concurrent.

The procedure to foreclose, or forfeit, the shares is prescribed by statute in most or all of the States, and is seldom set forth in the by-laws, owing to its length. Strict adherence to the statutory procedure is required.

For a further discussion of subscriptions, see chapter 10.

§ 76. Stock Certificates.

A certificate for full paid stock is usually required by statute to be issued to the owner of shares. In the absence of such statutes, a by-law provision cov-

ering the subject is equally effective. Such certificate is often erroneously confounded with that which it represents. It is merely the evidence of the holder's interest in the corporation, just as a deed is evidence of ownership of land.

Prior to their being issued, stock certificates in number sufficient to answer the needs of the corporation are procurable in book form. They are printed with the necessary blanks, both in the body and in the stub, and are consecutively numbered. The forms given below would answer in probably every State and territory in the United States. Though the corporate seal is not necessary, it is a wise precaution for the prevention of fraud for the secretary to affix it to each certificate issued. The stock certificate book is usually kept by him. The signature of the secretary is usually sufficient, though in a few States it is required that either the president or treasurer, or both, shall join with the secretary in signing certificates. In the absence of statutes the matter may be disposed of in the by-laws. The most usual provision found is that both the president and secretary shall sign.

The blanks in the printed certificates should be all carefully filled. It is such a dereliction as to amount to a breach of trust for issuing officers to knowingly issue and deliver certificates containing blanks, either for names, numbers, dates, or amounts. They should never be issued prematurely. Under laws requiring the issuance of certificates for fully paid stock, the possession of a certificate, with the endorsement of full payment thereon, is prima facie evidence of

full payment, and the officer issuing it is liable to the corporation for its full par value. But, notwithstanding the convenience of having a certificate representing the member's interest, it is not necessary to his full enjoyment of the rights as a full paid stockholder, as between himself and the corporation. The mere fact that it has not been issued, or that after issue it has been lost or destroyed, after full payment therefor, cannot deprive him of the right to receive dividends, to vote at corporate meetings and to hold corporate office. Nor, on the other hand, will the non-issuance of the certificate, whether the subscription be fully paid or not, constitute any defense against the claims of creditors of the corporation.

The form given below for a certificate for common stock, and the stub may be used, or easily adapted to any corporation. As a rule, there are designations made by statute of the officers who shall sign certificates, though exceptions are found in one or two States. The by-laws should, and usually do, make provision on the subject.

Form 56.

Certificate No. .....
Shares, 10. ..
Date, Mar. 1. 1904.
To whom issued,
E. P. Jones.

Address,
P. O. Box 129,
Georgetown,
D. C.

Issued against Surrendered
Certificate No.....

Receipt of the above Certificate admitted this Mar. 1, 1904.
E. P. Jones.

Certificate No.....
Cancelled 65
Certificates issued in its stead as follows:
No..... for .....shares.
No..... for .....shares.
No..... for .....shares.

No..... 10 Shares.

THE NEW ERA PRINTING COMPANY.

Incorporated under the laws of the State of .....

Capital Stock .....$100,000.
Number of Shares, 1,000. Par Value, $100.

Full Paid.

This is to Certify that E. P. Jones is the owner of ten shares of the capital stock of the New Era Printing Company, transferable on the books of the Company by the owner thereof in person or by duly authorized attorney, upon surrender of this certificate properly endorsed.

Witness the corporation seal and the signatures of its officers, duly authorized.

Dated March 1, 1904.

JAMES WILLARD,
President.

J. F. WESTON,
Secretary.

(Corporate Seal.)

If by the constating instruments of the particular corporation no provision is made for preferred stock, its certificates will be understood to represent common stock without a specification to that effect. But if the issuance of both kinds is provided for in the articles, charter, or by-laws, being authorized by statute, each certificate should clearly indicate on its face the kind of stock which it represents. This may be done by printing across the face of the certificate, in bold type, the words, "Common Stock," and, in addition, the words, "ten shares of the capital stock," (as in the body of the preceding form), should be changed by insertion of the word, "common" between the words "the" and "capital." Supposing the stock consist of $75,000 common and $25,000 preferred, then, in lieu of "Capital Stock, $100,000" in the heading should be printed:

Capital Stock .....$100,000.
Common Stock .....$ 75,000.
Preferred Stock .....$ 25,000.

Certificates for preferred stock should be distinguished in the same way, and should clearly show in what the preference consists, either by setting it forth in detail, or by reference to the articles or by-laws, and all the conditions upon which it is issued, as well as any limitations placed upon the owner of it as to voting. The following is a proper and easily adaptable form:

Form 57.

CERTIFICATE FOR PREFERRED STOCK.

(The Stub is the same as Form 56, except that the word "Preferred" should appear at the top or across its face.)

THE NEW ERA PRINTING COMPANY.

Incorporated under the laws of the State of .....

Capital Stock .....$100.000.
Common Stock .....$ 75,000.
Preferred Stock .....$ 25,000.

Shares, $100 Each.
Full Paid.

This is to Certify that Robert Forbes is the owner of twenty-five shares of the preferred stock of the New Era Printing Company, transferable on the books of said corporation by the owner thereof, in person or by attorney, duly authorized, upon surrender of this certificate properly endorsed.

The preferred stock represented by this certificate is entitled to an annual dividend of five per cent., payable out of net profits of the corporation before any dividend is paid upon the common stock; and it the net profits in any year

should be insufficient to pay said preferred dividend, either in whole or in part, any unpaid portion thereof shall become a charge against the net profits of the corporation, and shall be paid in full out of the net profits before any dividends are paid upon the common stock.

The preferred stock represented by this certificate is subject to redemption at the option of the said corporation at any time after six years from the date hereof, upon payment of its par value and any accumulated dividends, and, unless sooner retired, shall be redeemed by said corporation at its par value, with payment of any accumulated dividends, on the 1st day of March, 1914.

The preferred stock represented by this certificate is not entitled to vote at stockholders' meetings of said corporation, nor to participate in profits beyond its fixed preferential cumulative anual dividend of five per cent.

Witness the signatures of the officers of said corporation, duly authorized, and its corporate seal hereto affixed.

JAMES WILLARD,
President.

J. F. WESTON,
Secretary.

(Corporate Seal.)

The next form of certificate for preferred stock differs materially from the above, conforming, we will suppose, to differing provisions in the contracts of subscriptions and by-laws. In it the preferred shares first draw a dividend of five per cent., and the common stock at the same time draws a dividend of five per cent. if the residue of profits warrant it, after which any remaining profits are apportioned to both preferred and common stock, pro rata. Nor does it contain any restriction upon the voting privileges of the owner.

Form 58.

.....

NEW ERA PRINTING COMPANY.

Incorporated under the laws of
the State of .....

No. ..... 25 Shares.

Capital Stock.....$100,000.
Common Stock .....$ 75,000.
Preferred Stock .....$ 25,000.

Shares, $100 each.
Full Paid.

This is to Certify, That Robert Forbes is the owner of twenty-five shares of the preferred stock of the New Era Printing Company, transferrable only on the books of said corporation, by the owner thereof, in person or by attorney, duly authorized, upon surrender of this certificate properly endorsed.

The stock represented by this certificate is part of an issue of $25,000, par value, authorized by the terms set forth by the articles of incorporation of the said company, as filed

in the office of the Secretary of the State of ....., on the 15th day of February, 1904, and incorporated herein as follows:

The holders of said preferred stock are entitled to receive a cumulative preferential dividend of five per cent. per annum, payable each year out of the net earnings of said corporation before the reservation of any sum out of the net earnings is made for working capital, and before any dividend is paid upon the common stock; but, should the net earnings in any one year be insufficient to pay said preferred dividend in full, such portion of said dividend as may be available for the purpose shall be paid, and any unpaid dividends shall be charged against the net earnings of said corporation and shall be paid in full out of the first available net earnings.

If, after the payment of said dividend of five per cent. upon said referred stock for any year, together with any or all arrearages thereon, any further available profits shall remain, the directors of said corporation may, at their option, declare and pay a dividend not exceeding five per cent. upon the outstanding common stock, and should there still remain available net earnings, may declare such further and additional dividends upon all the outstanding stock of the corporation as may by them be deemed advisable, paying to common and preferred stock alike the same per centum of any such additional dividends.

Witness the signatures of the officers of said corporation, duly authorized, and its seal affixed hereto, this March 15, 1904.

JAMES WILLARD,
President.

J. F. WESTON,
Secretary.

(Corporate Seal.)

.....

Where the terms and conditions upon which preferred stock is issued are expressed in great detail, so that their full insertion in the certificate would

encumber it with excessive verbiage, a literal insertion is omitted and the terms, as embodied in the articles, or by-laws and contract of subscription, are incorporated by reference thereto. If that method is necessary or desirable, the second and third paragraph in the last preceding form would be omitted, and the following might be inserted, in lieu thereof:

> "The stock represented by this certificate is part of an issue of twenty-five thousand dollars ($25,000), par value, authorized by the articles of incorporation (or charter, or by-laws), and conforms to the contract of subscription of the said Robert Forbes ; said articles (or charter) being on file with the Secretary of the State of ....., and said contract of subscription (or by-laws) being in the hands of the secretary of said corporation."

§ 77. Increase and Diminution of Capital Stock—Action by Stockholders.

In most of the States the increase and diminution of capital stock is regulated to some extent by statutory limitations. Action by the stockholders is almost invariably required. More stringent safeguards are usually thrown around the diminution than an increase of capital stock, as the latter has a direct tendency to impair the security of creditors. The forms of the resolution for an increase and for a diminution do not materially differ.

The resolution by the stockholders is simple, and may be as follows :

Form 59.

.....

Be it resolved, that the capital stock of the New Era Printing Company, a corporation, be and the same is hereby increased from one hundred thousand to two hundred thousand dollars, to be divided into two thousand shares of one hundred dollar each.

Resolved, that the Board of Directors be, and they are hereby authorized and directed, to take all proper and necessary steps to carry this resolution into effect.

.....

Form 60.

.....

CERTIFICATE OF INCREASE
of
CAPITAL STOCK.

State of New York,
City and County of New York. } ss

We, Orlando J. Smith, Chairman, and George W. Cummings, Secretary, of the special meeting of stockholders of the American Press Association of New York, held at the office of the said Company in the City of New York, for the purpose of increasing its Capital Stock, do hereby certify :

That the American Press Association of New York is a stock corporation formed under the laws of the State of New York. That the said Company, desiring to increase its Capital stock, the stockholders of the said Company, and every one of them, did sign the waiver, hereto annexed and marked "A," of notice of such meeting provided by law.

That at the time and place specified in the said waiver of notice, there appeared in person all the stockholders of the said Company, and that the meeting organized by choosing from among their number the said Orlando J. Smith, as Chairman, and the said George W. Cummings as Secretary thereof.

That the above waiver having been presented, the following resolution was proposed:

Resolved, That the American Press Association of New York does increase its Capital Stock from the present amount thereof, viz.:—the sum of one thousand dollars, consisting of ten shares of the par value of one hundred dollars each, to the amount of one million, six hundred thousand dollars, to consist of sixteen thousand shares of the par value of one hundred dollars each.

That the vote of those present in person being duly canvassed, it appearing that ten (10) shares of the Capital Stock of said Company being all the stock thereof, voted in favor of said resolution, which was thereupon declared carried.

And we do further certify:

That the amount of the capital of the said corporation actually paid in is one thousand dollars and that the debts and liabilities of the corporation are none, and that the amount of which Capital Stock of said corporation is increased is one million, six hundred thousand dollars.

In Witness Whereof, we have hereunto subscribed our hands to this certificate in duplicate this 27th day of September, 1893.

ORLANDO J. SMITH,
Chairman.

GEORGE W. CUMMINGS,
Secretary.

State of New York,
City and County of New York. } ss

Orlando J. Smith, Chairman, and George W. Cummings, Secretary, being severally duly sworn, each for himself, deposes and says that he has read the foregoing certificate subscribed by him, and that the same is, in all respects, true.

ORLANDO J. SMITH,
Chairman.

GEO. W. CUMMINGS,
Secretary.

Sworn to before me this 27th day of September, 1893. } GEO. W. CUMMINGS. ORLANDO J. SMITH,

CHARLES A. BRODEK,
Notary Public.
N. Y. Co.

State of New York,
City and County of New York. } ss

On this 27th day of September, 1893, before me personally came Orlando J. Smith and George W. Cummings, to me known to be the persons described in and who executed the foregoing certificate and severally acknowledged to me that they executed the same.

CHARLES A. BRODEK,
Notary Public.
N. Y. Co.

The undersigned, being all of the stockholders of the American Press Association of New York, and this day, at 3 o'clock P. M., personally, as above set forth, present at a special meeting of the said Company to increase its capital stock from one thousand dollars, consisting of ten shares of the par value of one hundred dollars each to sixteen hundred thousand dollars, consisting of sixteen thousand shares of the par value of one hundred dollars each, hereby waive notice of said meeting provided for by law.

Dated, New York, September 27, 1893.

ORLANDO J. SMITH,
GEO. W. CUMMINGS,
PAUL WILCOX.

Form 61.

CERTIFICATE
of
DIMINUTION OF CAPITAL STOCK.

KNOW ALL MEN BY THESE PRESENTS:

That we, A. R. Kline and G. W. Dobbs, the Chairman

and the Secretary, respectively, of a meeting of the stockholders of the Enterprise Mercantile Company, held at the principal place of business of said corporation, on the 15th day of April, 1904, for the object and purpose, and in pursuance of the notice hereinafter mentioned; and,

That we, Enoch Koch, William Brock and Emil Jansen, are Directors of said corporation, and who constitute a majority of its Board of Directors, do hereby certify.

That the said Enterprise Mercantile Company is a corporation, duly incorporated and organized under the laws of the State of ....., on or about March 1, 1901; that said corporation, at the date of its incorporation, had, and ever since said date has had, a capital stock of fifty thousand dollars ($50,000), divided into five hundred (500) shares of the par value of one hundred dollars ($100) each, and that at all the times hereinafter mentioned, five hundred shares of said stock were issued and outstanding, and that said shares are fully paid up;

That at a meeting of the Board of Directors of said corporation, duly held on the 15th day of March, 1904, a resolution was duly passed and adopted, and entered in the minutes of said meeting, calling a special meeting of the stockholders of said corporation for the object and purpose of considering and voting upon the proposition to diminish the capital stock of said corporation from fifty thousand dollars, divided into five hundred shares of the par value of one hundred dollars each, to twenty thousand dollars ($20,000), to be divided into two hundred (200) shares of the par value of one hundred dollars ($100) each, which said resolution directed and specified that such meeting should be held at the principal place of business of said corporation, to wit, at Room ....., ... Street, in the City of ....., in the County of ....., State of ....., being the building and place where the Board of Directors of the said corporation usually meet, and that the time of said meeting should be at 10 o'clock in the forenoon of ....., the 25th day of April, 1904; and which said resolution further directed that notice of said meeting

should be given by the Secretary of said corporation by publication in the "....," published weekly at the said City of ....., in said County of ....., State of ....., once a week for at least thirty days, and until the said 25th day of April, 1904, and in addition to said notice by publication, that the Secretary should mail a notice to each one of the stockholders whose names then appeared on the Company's books, sufficiently addressed to his place of residence, if known, and if not known, then at the principal place of business of the corporation, and that each and all of said notices should be mailed to such stockholders at least thirty days before the day appointed for such meeting;

That at the time and place specified in said notice, namely, on ....., the 25th day of April, 1904, at 10 o'clock A. M., said meeting was held at the principal place of businesss of said corporation, and in the building where the Board of Directors usually meet, to wit: at Room No. ....., ... Street, in said City of ....., in the County of ....., in the State of .....;

That said meeting was called to order by the President of said corporation, Enoch Koch, who presided thereat as the Chairman thereof, in accordance with the By-Laws of said corporation defining the duties of the President, and that the Secretary of said corporation, E. J. Runyon, was elected to act, and did act, as the Secretary of said meeting;

That the amount of stock represented at said meeting, as ascertained upon the roll call, was five hundred (500) shares, of the par value of one hundred dollars ($100) each, or, in the aggregate, fifty thousand dollars ($50,000); that there were present at said meeting, either in person or by proxy, stockholders of said corporation owning and holding the aforesaid five hundred (500) shares of the capital stock of said corporation;

That the Secretary of said corporation and of said meeting stated that, in pursuance of the resolution adopted by

the Board of Directors of said corporation on the 15th day of March, 1904, and as required by law, he had given notice of said meeting, specifying the time, place and object of the meeting and the amount to which it was proposed to diminish said capital stock, by publication in the ".....," once a week for at least thirty days next preceding said meeting, to wit: once a week from the 16th day of April, 1904; and, in addition to said notice by publication, that he had addressed a printed copy of such notice to each of the stockholders whose names then appeared, and now appear, on the Company's books, sufficiently addressed to their respective places of residence (all of such places of residence being known to said Secretary), and that he had mailed said notices, with the proper postage thereon prepaid, on the 31st day of March, 1904, at least twenty days before the said 25th day of April, 1904, the day appointed for said meeting of stockholders; and in proof thereof, the said Secretary produced at said meeting an affidavit of the publisher of the said ".....," certifying to the publication therein, as aforesaid, of said notice, and an affidavit, made by said Secretary, certifying to the mailing and addressing by him of such notices to each of said stockholders as aforesaid; and thereupon the said stockholders accepted said proofs as satisfactory and sufficient on the question of the publication of said notice, and the service thereof, as required by law, and ordered that said affidavits be filed in the office of the corporation;

That the proposition to reduce said capital stock of said corporation, as submitted by the Board of Directors of said corporation, in the aforesaid resolution and notice, was then discussed and considered by said stockholders, and, thereupon, by a vote of shares of stock, had upon roll call, all the stockholders present at said meeting duly passed and adopted a resolution in the words and figures following, that is to say:

"Resolved, That the capital stock of the Enterprise Mercantile Company be and the same is hereby diminished from fifty thousand dollars ($50,000), divided into five hundred (500) shares of the par value of one hundred dollars ($100) each,

fully paid, to twenty thousand dollars ($20,000), divided into two hundred (200) shares of the par value of one hundred dollars ($100) each, fully paid;"

That the foregoing resolution, reducing the capital stock of said Enterprise Mercantile Company from fifty thousand dollars ($50,000) to twenty thousand dollars ($20,000), was adopted by the vote, cast in favor thereof, of stockholders representing five hundred (500) shares of the capital stock of the corporation as originally incorporated, and being more than the requisite two-thirds of the said capital stock; that no votes were cast against the adoption of said resolution, and that the same is the whole vote by which said object was accomplished; and that said capital stock, as diminished, is greater in amount than the indebtedness of said corporation;

That all of the essential pre-requisite steps and proceedings in the matter of the calling and the holding of said meeting, and the adoption of said resolution, and of the diminishing of said capital stock as effected, or authorized to be effected, by said resolution, hereinabove recited, are in compliance with the law in that behalf made and provided, and are fully set forth and recorded in the minute book of said corporation;

And, finally, that all of the matters and facts set forth in this certificate are true.

In Witness Whereof, we have hereunto set our hands and caused the corporate seal of said corporation to be hereunto affixed, at the said City of ....., in the County of ... . and State of ....., this 25th day of April, A. D., 1904.

ENOCH KOCH,
Chairman of the above-mentioned meeting.

E. J. RUNYON,
Secretary of the above-mentioned meeting.

(Corporate Seal.)

ENOCH KOCH,
WILLIAM BROCK,
EMIL JENSEN,

Directors of the Enterprise Mercantile Company, and constituting a majority of the Board of Directors.

(Acknowledgment.)

.....

An increase or diminution of the capital stock of a corporation is a matter of such importance that it requires statutory authority.[2] The right to increase or diminish the capital stock is usually conferred by the charter in the States where corporations are created by special act, and by general law in other States. Such statutes usually prescribe the procedure and require the assent of a proportion of the stockholders.

Unless authority to make an increase is clearly conferred upon the directors, it can only be exercised by the stockholders.

A charter authorizing an increase of the stock "at the pleasure of the corporation," does not empower the directors to increase the stock without action by the stockholders.[3]

Stock issued upon an attempt to increase the capital stock without statutory authority is void. It confers upon the holders of it no right to participate in the corporate management, nor in the profits of the business. But while such holder has none of the rights, he is not subjected to any of the burdens of

a stockholder. He cannot be compelled to pay for the spurious stock.[4]

Where a corporation increases its capital stock, there are two ways in which the shares representing the increase may be disposed of. They may be offered generally to any one, whether already stockholders or not, on the same terms as those upon which the original stock was issued ; or, they may be distributed among the existing stockholders as a stock dividend.

The stockholders of the original shares would have the first right to subscribe for the stock, which would be a valuable privilege if the stock were above par in the market. They may undoubtedly waive such preference right in favor of outsiders or in favor of other stockholders. The corporation has no right, even when backed up by a majority, to sell the new shares and ignore the preferential rights of stockholders. If any stockholder dissents, the sale is void as to him.[5]

But capital stock is frequently increased in order to obtain additional capital with which to carry on the corporate enterprise successfully. It is clear that no such increase could take place merely through the process of declaring and paying a stock dividend. It can only be accomplished by having the stock taken and paid for by the existing stockholders, or by converting it into treasury stock and selling it in the market. The latter can only be done by having a stock dividend declared, and then, by common consent, having the new stock donated to the corporation. That gives it the status of treasury stock, and it may be

sold as such. The usual method of procedure is for the certificates representing the new issue to be assigned by the stockholders to the treasurer, who then sells it as his individual stock, but really for the use and benefit of the corporation.

But better than the roundabout method above described for obtaining additional capital, if the credit of the corporation is good, and its stocks are marketable, is to let the increase represent preferred shares, when the charter or general law permits that to be done. No wrong is done to any creditor by thus issuing preferred stock to obtain working capital. The consent of the stockholders, or such percentage of them as the statute designates, is all that is required to legalize the issue. If the stockholders consent, no one else has any right to complain, since preferential dividends can only be paid out of profits; and so long as any creditors remain unpaid, there are no profits.

Where an increase of the capital stock of a corporation has been voted, and part of the increase subscribed for, the fact that some of the stockholders have refused to take and pay for the shares allotted to them, is no defense to an action upon the subscriptions of those who have agreed to take and pay for their proportion.[6]

A diminution of capital stock under statutory authority may be accomplished as easily as an increase if the rights of creditors are not affected thereby. But a decrease of the capital stock presents to existing creditors the aspect of a reduction of their security. Therefore statutes usually go somewhat into

details on the subject of diminishing capital stock, and the proceedure should be closely followed.[7]

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[1] Warren v. King, 108 U. S. 389.

[2] Sutherland v. Olcott, 95 N. Y. 93; Grangers' Life, etc., Ins. Co. v. Kamper, 73 Ala. 325; Winters v. Armstrong, 37 Fed. R. 508; Seigouret v. Home Ins. Co., 24 Fed. R. 332.

[3] Railway Co. v. Allerton, 18 Wall (U. S.) 233.

[4] Scoville v. Thayer, 105 U. S. 143; Stall & Worth's Case, L. R., 4 Ch. App. 682, note.

[5] Jones v. Morrison, 31 Minn. 140; State v. Smith, 48 Vt. 266; Gray v. Portland Bank, 3 Mass. 364.

[6] See Clark v. Thomas, 34 Ohio St. 46; Avegue v. Citizens' Bank, 40 La. Ann. 799; Nutter v. Lexington, etc., Ry. Co. 6 Gray (Mass.) 85.

[7] See Thompson v. Reno Savings' Bank, 19 Nev. 103; Allibone v. Hager, 46 Pa. St. 48.

CHAPTER VIII.

Subscriptions to Capital Stock.

78. Subscriptions Taken Before Incorporation Containing Divers Provisions.
79. Subscriptions Taken After Incorporation.
80. Receipts for Subscription Money.
81. Conditional Subscriptions.
82. Unilateral Subscriptions.
83. Preliminary Subscription with Divers Conditions and Stipulations.
84. Taking Stock Without Written Agreement.
85. Receipts and Assignments Thereof Prior to Issuance of Certificates.

§ 78. Subscriptions Taken Before Incorporation, Containing Divers Provisions.

The forms used in the present Chapter, with the explanations interspersed, cover the entire subject so fully that no introductory text is required.

The first is a form for subscription taken before incorporation.

If there be no urgency, the subcsription will be made payable after incorporation to the proper officer or bank, or to such agent as may be, by the subscribers, designated in the subscription papers. In the former supposed case the agreement may read as follows :

Form 62.

.....

We, the undersigned, hereby agree with each other, and by us, under the name of "Pernau Land and Water Company," for the purpose of procuring water rights on one

or more of the rivers or streams running through the counties of ..... and ....., in this State; of purchasing erecting and constructing dams, reservoirs, canals, aqueducts and other ways in and by which the water so procured from said rivers, or any of the same, can be utilized for general purposes; to secure and impound springs, streams, and other water, in either of said counties, and lead the water so secured to any of such canals and waterways, to supply farmers, miners, cities, towns and villages with any of the said waters for mining, farming, drinking, irrigation, and other purposes; of negotiating for, buying, selling, letting, improving and cultivating lands and town lots in said State; laying out town lots and colony tracts; and selling and letting such town lots and colony tracts. That the capital stock of said corporation shall be $1,000,000, divided into ten thousand shares of $100 per share; and we hereby agree with each other, and one with the other, that we will take the number of shares of the capital stock of said corporation which appears opposite our respective names hereunto subscribed, and will pay twenty per cent. of the par value of the said shares so subscribed by us respectively, in five (5) days after the articles of said incorporation shall have been filed in the office of the County Clerk, and will pay the same to the Treasurer of said corporation, at the First National Bank in the City of ....., in the State of ..... And we hereby constitute said Treasurer as the agent for said corporation to collect the amount which becomes due as aforesaid.

We further nominate, constitute and appoint C. T. Webb, J. F. Barber and Enoch Graham as our agents, and the agents of the corporation so to be formed, to negotiate for the purchase of any one or more water rights, canals, reservoirs, aqueducts or water ways for said corporation, and to draw from said Treasurer any or all moneys that may have been paid to him by us respectively, by virtue hereof, and use said money for paying the same; and any and all contracts which our said agents may make in said matter shall be binding upon said corporation and also upon us. Our said agents are fur-

ther authorized to employ engineers and other assistance, and have them survey routes for such canals and examine proper locations for dams, and do such other service as may be in their opinion for our best interest and the interest of said corporation, to accomplish the objects and purposes for which the same is to be formed.

Dated March 15, 1904.

Names of Subscribers.	Number of Shares Subscribed.
C. T. Webb.....	200
John Goode	100
J. F. Barber.....	100
Enoch Graham	100
Robert Simpson	100
James Haycroft	100

.....

Owing to the stringent requirements of statutes generally found, subscriptions to the capital stock of projected railway corporations will be much more elaborate, in order to bind, and at the same time fully protect, the subscribers. An approved form of such a subscription is as follows :

Form 63.

.....

PRELIMINARY SUBSCRIPTION AGREEMENT
TO RAILROAD COMPANY,
with the
Interposition of Trustees.

This agreement, made and entered into this 1st day of May, 1904, by and between the parties whose names are hereunto subscribed, witnesseth that :

Whereas, it is the purpose of the undersigned to construct a continuous line of railroad to extend westerly from the City

of ....., in the State of ....., or some convenient point near said city by way of the Town of ....., along or near the ..... River, to the City of ....., all in said State, by a convenient and practicable route, hereafter to be determined upon, to some point on tide water, near the City of ....., in said State, constituting a continuous line about 175 miles in length.

And Whereas, it is proposed and intended for that purpose to organize, under the laws of the State of ....., a corporation, to be called the ..... and ..... Air Line Railway Company, with a capital stock of five million dollars ($5,000,000), for the purpose of constructing and operating such railroad, so as to insure for the public benefit the existence and operation of a continuous line of railroad between the said points;

And Whereas, the parties hereto, as business men, as shippers and consumers of freight, and as individuals, as citizens of said State, and as property owners, will be directly and indirectly, jointly and severally, benefited by the construction and operation of said railroad;

Now, therefore, this agreement witnesseth: That for the purpose of aiding, promoting and forwarding the construction of said line of railroad, and for maintainng the same as a bona fide competing line, and for and in consideration of the premises, and for the sum of $1.00 by each of the undersigned to the other in hand paid, the receipt whereof is hereby by each of us acknowledged, the undersigned parties hereto do hereby mutually covenant and agree, and bind themselves unto the other, and each to and with the said proposed corporation, the ..... and ..... Air Line Railway Company, as follows, to wit:

I.

Each of the undersigned hereby subscribes the sum set opposite his name to the capital stock of the said proposed corporation, the ..... and ..... Air Line Railway Company.

The subscriptions of the undersigned, and each of them, are made, however, upon the express condition precedent that, unless within ninety days from and after the date hereof, there shall be subscribed to the capital stock of the said .... and ..... Air Line Company sums of money aggregating in all the amount of one hundred and seventy-eight thousand dollars ($178,000), the subscriptions of the undersigned, and each of them, shall be null and void; provided, however, that the Executive Committee of the Traffic Association of the State of ..... shall have the power, by vote duly passed and recorded in their minutes, to extend the time within which said amount may be subscribed, but such extension shall not exceed six months, and if the said sum of one hundred and seventy-eight thousand dollars ($178,000) shall be subscribed within ninety days, or within the time so extended, then these subscriptions shall be in full force and effect.

II.

The undersigned hereby further agree that said proposed corporation may, for the purpose of convenience, be organized by any other persons than the undersigned, or any of them, or by any number less than all of them, and that the Articles of Incorporation of said railroad company need not set forth, in the list of subscribers to its capital stock, all or any particular one of the names of, or the amounts subscribed by, the undersigned, and this covenant shall be deemed to have been made expressly for the benefit of said proposed corporation and shall be irrevocable; and the subscriptions of the undersigned shall be valid and binding upon the undersigned, and the subscribers shall be liable thereon to the said proposed corporation, the ..... and ..... Air Line Railway Company, whether the amount subscribed by the undersigned and by whom subscribed be set forth by the Articles of Incorporation of said proposed corporation or not.

III.

Each of the parties hereto further covenants and agrees to and with the others, and with the said proposed corpora-

tion and each and all of them, subscribed for by him may be issued in the names of nine Trustees (pledged to maintain the road as a competitive line), who shall be selected as hereinafter provided, and that said Trustees, their survivors or survivor, and successors or successor, shall. for the term of ten (10) years after the 1st of January, 1905, have the exclusive right and power to vote such stock in such manner as the majority of the Trustees shall determine at any and all meetings of the stockholders thereof, and for any and all purposes, and to sign, execute and acknowledge as stockholders any and all documents, papers, written assents, By-Laws, or amendments to By-Laws, contracts, acts or deeds, which, in the opinion of a majority of said Trustees, it may be necessary, desirable or expedient to so sign, execute or acknowledge; and the power herein conferred upon the said Trustees by the respective parties hereto is and shall be irrevocable for the said term of ten (10) years, and shall be deemed to be coupled with an interest in the stock of the respective parties hereto, so held in trust, which interest the said Trustees shall hold for the benefit of all other parties hereto.

And it is further covenanted and agreed that the said nine Trustees shall be elected by the subscribers to the capital stock whose aggregate subscriptions, in order of time of subscription, shall first amount to the sum of one hundred and seventy-eight thousand dollars ($178,000); and the said election shall be conducted upon the system of cumulative voting as provided in the statutes of the State of .....

(Here make special reference to Acts or Code provisions.)

And it is further covenanted and agreed that in the event of a consolidation of the said proposed corporation with any other corporation, and as often as any consolidation shall be made, it shall be in the discretion of the said Trustees to surrender to such consolidated corporation the certificates of stock held by them as aforesaid, and receive in exchange therefor new certificates in such consolidated corporation or corporations, to be held on the same trusts as those herein expressed.

And it is further understood and agreed that the said Trustees shall cause to be issued Trustee's certificates for stock, which certificates shall respectively set forth the number of shares of stock in the said corporation, held in trust for each subscriber or his successor in interest, and shall also specify that the said stock is held subject to the following irrevocable trusts, to wit:

First.—Said Trustees, their survivors, survivor, successors and successor, hall hold said shares with full power to fill from time to time each and every vacancy in their number upon the joint written nomination of a majority of the surviving Trustees, approved in writing by the holders of a majority of the Trustees' certificates issued hereunder.

Each new Trustee shall, from and after the filing of said nomination, so approved in the office of the said railroad company, be as fully vested with said trust as if he was one of the original Trustees above named.

Second.—Said Trustees above named, their survivors, survivor, successors and successor, shall, as stockholders and owners, vote said shares for all purposes whatsoever, upon every question raised at each and every meeting of said Company, whether annual or special, and at any and all stockholders' elections, as the majorty of them shall, in their discretion, from time to time determine, and shall also sign, execute and acknowledge as stockholders any and all documents, consolidation papers, written assents, By-Laws, amendments to By-Laws, contracts, acts or deeds which, in the opinion of a majority of said Trustees, it may be necessary, desirable or expedient to so sign, execute or acknowledge.

Such Trustees' certificates shall further set forth respectively that the shares represented thereby are transferable only upon surrender of such certificates by a conveyance in writing signed by the person to whom the same is issued, or his attorney thereunto lawfully authorized and registered in the Trustees' transfer book therefor kept by the parties designated by the Trustees for that purpose, and that every person accepting any transfer thereof declares by so doing that he

received said shares subject to said trust, and that such certificate is not valid until signed by two of said Trustees and registered as aforesaid.

The said certificates shall be transferable by indorsement and registration, as above provided, in the same manner as shares of stock ordinarily are.

Five shares of stock each may be transferred by the Trustees to, and allowed to stand in the names of, the persons selected as Directors of the proposed railroad company to qualify them as such.

And it is further covenanted and agreed that in the event of any consolidation of the said proposed corporation with any other corporation, after such certificates have been issued, and also in the event of any consolidation of such consolidated corporation thereafter with any other corporation, then said Trustees shall have the power at any time, by a majority vote, to call in such issued certificates similar in form, but representing stock in such new or consolidated corporation.

This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto, and all parties thereto, and all parties who shall subscribe their names to this agreement, or to other agreements substantially identical herewith, shall be deemed parties to this agreement, and each and every subscriber hereto affixing his name thereby covenants and agrees to and with such parties as subscribe their names to agreements identical or substantially identical herewith, with the same force and effect as if the names of such other parties were hereunto subscribed.

It is further understood that no call shall be made until the amount of one hundred and seventy-eight thousand dollars ($178,000) shall have been subscribed, and subscriptions shall be then payable in installments, extending through six months or more, as the Board of Directors of said proposed corporation may determine.

Names of Subscribers.	Number of Shares Subscribed.
C. T. Webb	500
John Goode	100
J. F. Barber	150
Enoch Graham	50
Robert Simpson	200
James Haycroft	10

§ 79. Subscriptions Taken After Incorporation.

Form 64.

SIMPLE AND SHORT.

NEW ERA PRINTING COMPANY.

To be incorporated under the laws of the State of the State of .....

Capital Stock, $100,000.
Divided into 1,000 shares of $100 each.

We, the undersigned, hereby severally agree to take and pay for its par value the number of shares of the capital stock of the New Era Printing Company set opposite our respective names. Payment to be made on demand of the Treasurer, or upon notice from the Secretary after organization. This January 15, 1904.

Names.	Addresses.	Shares.	Amount.
E. P. Jones	Washington, D. C.	10	$1,000
M L. Bennett	Washington, D. C.	25	2,500

Stock subscriptions may be limited and restricted, as may other contracts. It is not necessary that all

should stand upon an equal footing with respect to the terms and conditions of payment, provided that all interested have knowledge of the more favorable terms given to one or more less than the whole, and that the subscription is accepted by the corporation before the rights of creditors have attached

Form 65.—Covering Compensation to Promoter.

.....

NEW ERA PRINTING COMPANY.

Incorporated under the laws of
the State of .....

Capital Stock, $100.000.
Divided into 1,000 Shares of $100 Each.

We, the undersigned, severally agree to take and pay for at par value the number of shares of the capital stock of the New Era Printing Company set opposite our respective names. Payment to be made as follows : Ten per cent. upon executing and delivering this agreement to William Hopkins, agent and promoter of said company; the same, or so much thereof as may be necessary to be expended by him in promoting said company, that is to say, in procuring other subscriptions and to cover expenses of incorporating said company; forty per cent. upon notice of the due incorporation and organization of said company to its Treasurer, and the balance at once or in installments upon demand or call from the Board of Directors.

Dated March 1, 1904.

Names.	Addresses.	Shares.	Amount.
Robert Forbes..	Washington, D. C.....	20	$2,000
Sam'l Smith	Washington, D. C.....	15	1,500

.....

§ 80. Receipts for Subscription Money.

If certificates are ready to be issued when subscriptions are paid, a simple, ordinary receipt from the Treasurer, or other person authorized to accept payment, will suffice. This receipt will, upon presentation to the Secretary, warrant him in issuing and delivering the certificate. But often payments are made before certificates in blank form have been printed. In that case the following form will suffice :

Form 66.

No.....

10 Shares.

Amount, $1,000.

Name,
E. P. Jones.

Date,
April 10, 1904.

No..... 10 Shares.

THE NEW ERA PRINTING COMPANY.

JAMES KNOX,
Treasurer.

$1,000.

Received from E. P. Jones the sum of one thousand dollars, in full for ten shares of the capital stock of the New Era Printing Company; and I hereby certify that he is entitled to receive a certificate duly executed for ten full paid shares upon the surrender of this receipt to the Secretary when certificates have been printed and are ready for delivery.

This April 10, 1904.

JAMES KNOX,
Treasurer.

Upon part payment of the amount specified to anagent, trustee or promoter

upon a subscription agree-ment providing therefor, the receipt may be in the following form :

Form 67.

No.....

20 Shares.

Amount, $200.

Name,
Robert Forbes.

Date,
March 1, 1904.

No..... .... 20 Shares.

THE NEW ERA PRINTING COMPANY.

WILLIAM HOPKINS,
Agent, (Promoter or Trustee.)

$200.

Received from Robert Forbes the sum of two hundred dollars. the same being ten per cent. of his subscription for twenty shares of the capital stock of the New Era Printing Company; said payment being made to me according to the terms and conditions of his subscription.

This receipt is to be accepted by the Treasurer of said Company when organized to the full amount thereof, upon the subscription of the said Robert Forbes.

This the 1st day of March, 1904.

WILLIAM HOPKINS,
Agent, (Promoter or Trustee.)

§ 81. Conditional Subscriptions.

The statutes of several States make the right to collect subscriptions by assessments depend upon a certain percentage of the stock being subscribed for. In those States, a subscription made after incorporation is of but little, if any, more value than if made prior thereto, unless the requisite percentage is obtained.

The subscription agreement may go somewhat into detail and contain conditions, the non-fulfillment of which will have the effect to release or revoke the subscription. Such subscriptions, whether taken before or after incorporation, may call either for ordinary or treasury stock. If for the latter, it may be as follows :

Form 68.

.....

NEW ERA PRINTING COMPANY.

To be incorporated under the laws of the State of ....., with a capital stock of $100,000.

Whereas, a corporation, to be named the New Era Printing Company, is about to be formed under the laws of the State of ....., and whereas, it is desirable to provide a working capital for it;

Therefore, we, the undersigned, hereby severally subscribe for the number of shares of the stock of said corporation set opposite our respective names, and agree to pay for the same at the rate of fifty dollars ($50) per share of the par value of one hundred dollars ($100), said stock to be set apart by said corporation as treasury stock immediately upon its being organized. Said payments are to be made to the Treasurer of said corporation as soon as said treasury stock is ready for

issue, the same to be issued as full paid and non-assessable. And the undersigned and William Hopkins, of Washington, D. C., promoter of said corporation, mutually agree that these subscriptions are conditional upon the procurance by him, or others, of bona fide subscriptions for at least fifty thousand dollars ($50,000), being secured herewith in thirty days from this date.

Dated May 1, 1904.

Names.	Addresses.	Shares.	Amount.
Wesley Reid....	Washington, D. C.....	50	$2,500
James Snook....	Washington, D. C.....	20	1,000

.....

In order to enable the corporation to legally perform the foregoing agreement, enough treasury stock for that purpose would have to be provided after organization; as to which see § 74.

§ 82. Unlimited Subscriptions.

Sometimes the procurance of the desired amount of preliminary subscriptions will be facilitated by using the unilitertal form of agreement, which may be as follows:

Form 69.

.....

NEW ERA PRINTING COMPANY.

To be incorporated under the laws of the State of ....., with a capital stock of $100,000, divided into 1,000 shares of $100 each.

I hereby agree to take and pay for ten shares of the capital stock of the New Era Printing Company at their par value; said payment to be made as follows: Fifty per cent. to the Treasurer of said company without demand as soon as an organization is effected and I receive notice of that fact;

the balance in installments of not more than ten per cent. of par value, each as called for by the Board of Directors. Unless at least one-half the capital stock of said company is, in good faith, subscribed within sixty days from this date, and said company duly incorporated within ninety days from this date, this subscription shall be void without further act on my part, or notice from me.

JOHN BROUGHTON.

Dated May 1, 1904.

.....

The unilateral form is much in use in obtaining subscriptions by mail. For that use the name in the body and the date are in blank, and a dotted line is provided, to indicate the place for signing. A prospectus usually accompanies this form, as to which see Chapter 10, also § 191.

§ 83. Preliminary Subscription, With Divers Conditions and Stipulations.

As was previously stated, the incorporators, or co-adventurers, in a corporate enterprise, may, at its inception, make any arrangement they see fit with respect to the interest each is to have in its stock, as well as the terms upon which the same shall be issued ; provided, always, that the consideration to be paid be not obviously inadequate. They may also provide that a preference shall be given to some over others in the distribution of profits, provided the statutes of the State where the corporation is formed authorize the issue of preferred stock and the right to issue it be claimed in the articles or charter. (For a full discussion of the subject of preferred stock, see Chapter 7.)

Where it is decided in advance of incorporation to issue preferred stock and subscriptions are to be taken, those for the preferred will essentially differ from those for common. The following form may be easily adapted to almost any scheme of incorporation :

Form 70.

.....

NEW ERA PRINTING COMPANY.

To be incorporated under the laws of the State of ....., with a capital stock of $300,000, of which $1,000 is to be Preferred Stock.

Total number of shares to be 3,000.

We, the undersigned, hereby severally agree to take and pay for the number of shares of the Preferred Stock of the New Era Printing Company (to be incorporated) set opposite our respective names, at the par value of $100 per share. Payment of fifty per cent. of the said price of said shares to be made to the Treasurer of said corporation immediately after its organization, without demand other than a notice from the Secretary of said corporation, and the remainder upon calls made by the Board of Directors; provided, that not more than ten per cent. of the par value of said shares shall be called for in any one month; provided further, that said corporation shall be founded and organized not later than May 1st, 1904, and further also provided, that not less than fifty per cent. of the preferred and not less than fifty per cent. of the common stock shall be subscribed for by responsible persons prior to said last named date.

And the following is an additional condition, the failure to comply with which shall render this subscription void : The said New Era Printing Company shall provide in its articles of incorporation (or provision shall be made in its charter)

for a capital stock of $300,000, divided into 3,000 shares of the par value of $100 each, 1,000 of which to be five per cent. cumulative prefered stock; the preferred stock to be redeemable at any time after six years at the option of said company, by paying the par value thereof and the accrued dividends, or may be exchanged, at the pleasure of its holders, at any time before redemption, at its par value, for any interest bearing bonds which may be issued by said corporation.

Dated March 1, 1904.

Names.	Addresses.	Shares.	Amount.
E. L. Casey.....	Washington, D. C.....	80	$8,000
I. R. Schick...	Washington, D. C.....	30	3,000

As has been previously shown, voting privileges are often withheld from the holders of preferred stock. The above form omits any reference to the question of the right to vote. It is doubtful if the signers to this agreement could be excluded by the terms of the by-laws after organization from the right to vote at corporate meetings without their consent. If the plan be to exclude them from the right to vote their shares, a provision should be inserted to that effect.

§ 84. Taking Stock Without Written Agreement.

After incorporation, no useful purpose is served by written subscription agreements. The purchaser of shares simply pays part or all of the agreed price and receives his certificate, or gives his promissory note for the same. The statutes of some of the States, however, require payment in cash of at least a percentage of the par value of the stock. If it is expected that shares will be taken by many persons, it would be well for the corporate officers to have applica-

tions printed in blank. The following is a convenient form :

Form 71.

.....

NEW ERA PRINTING COMPANY.
10 Printing House Square,
Washington, D. C.

Capital Stock.....$1.000,000
Shares.....$100 each.

Enclosed find my check for $..... in payment for ..... shares of the stock of the New Era Printing Company.

Certificates to be issued and delivered to.....
.....

City (or Town) of.....
State of .....

Dated ...., 1904.

Checks drawn to pay for stock should be made payable to the Company. In filling above blank, give name in full. Right to reject or pro rate subscriptions is hereby reserved.

.....

The check and the Treasurer's receipt for money paid for preferred stock are the same as in the case of common stock, except that the word "Preferred" is placed before "shares" and "stock" wherever they appear.

§ 85. Receipts and Assignments Thereof Prior to Issuance of Certificates.

The Treasurer's receipts, if many are to be used,

may be printed and bound in covers, with a perforated line between the stub and the receipt. The entries on the stub provide a complete record, from which the Treasurer makes up his permanent accounts. The Treasurer's receipts, being a substitute for, and evidence of title to, the certificates may be assigned. A blank assignment may be printed on the stock, thus :

Form 72.

.....

For a valuable consideration, I hereby assign and transfer to ....., of the City (or County) of ....., State of ....., the within receipt and the payments for which it was given, and hereby authorize and direct the Secretary of the New Era Printing Company to issue to the order of said ....., in my place and stead, the ..... shares of stock of said Company called for by the within receipt and for which the payments mentioned therein were made.

.....

Washington, D. C., May 1, 1901.

....

The receipt may be witnessed or acknowledged before a notary. Sometimes there is considerable delay in having satisfactory certificates engraved and printed; and in such case, it may be important that these receipts, being the equivalents of certificates, be attached. It may be desirable to have them lithographed and printed upon a good quality of paper, and to have them signed by the President and Secretary as well as the Treasurer. In some instances such receipts have continued in use for consid-

erable periods, and been dealt in extensively in stock exchanges, prior to being exchanged for certificates.

Under these circumstances the wording is so changed as to make the instrument resemble a certificate more than a treasurer's receipt. In the case of a corporate enterprise which immediately becomes a pronounced success and at once realizes or gives promise of realizing large profits, these receipts may command a price in the market in excess of par value, though only part paid. They are commonly designated "Installment Certificates," and way be in the following form :

Form 73.

No.....

Shares 10.

Payment,

Cash, $500.

Name,

E. P. Jones.

Date,

April 10, 1904.

No..... 10 Shares.

THE NEW ERA PRINTING COMPANY.

Washington, D. C.

March 1, 1904.

$500

The undersigned officers of the New Era Printing Company, being duly authorized thereto by the law, and the by-laws and resolutions of its Board of Directors, so providing, hereby certify that E. P. Jones, a subscriber for ten shares of the capital stock of said corporation, at the par value of $100 each, has paid into the treasury of said corporation, on account of said subscription, and according to the terms thereof fifty dollars per share in cash, upon payment of the remaining installments of said subscription, and surrender of this instrument, accompanied by vouchers showing payment of the remaining installments of said subscription, regular and duly executed certificates for said ten shares of stock, will be issued to the order of the said E. P. Jones, subscriber.

JAMES WILLARD, President.
JAMES KNOX, Treasurer.
J. F. WESTON, Secretary.

These receipts should also have printed on their backs an assignment adapted to this special form of receipt. It may be in the following form :

Form 74.

.....

For a valuable consideration, receipt of which is hereby admitted, I hereby asign and transfer to..... ....., of the City (or County) of ....., State of ....., my title to all shares which I have a right to demand and receive from the New Era Printing Company, a corporation, evidenced by my subscription therefor in connection with the within receipt and endorsements of payment endorsed below, on the back thereof, the same being ten shares; and I hereby direct and authorize the Secretary of said Company, upon complete payment therefor, and performance of any other conditions specified in my said subscription, to issue a certificate, in due and regular form, to the said....., or to his order.

Washington, D. C., May 1, 1904.

(Signed.) .....

.....

But after one of these is issued to a subscriber, it will not be necessary to issue a new one every time an installment upon the subscription is paid; but there should be an additional blank in which the payments should be credited as they are made thus:

Form 75.

.....

Date	No of Installment	When Due	Amount	Signature of Treasurer
1904				
March 15	1	March 15, 1904	$2.50	James Knox
April 15	2	April 15, 1904	2.50	James Knox
June 15	3	June 15, 1904	2.50	James Knox

.....

The stubs of Treasurer's receipts having this form upon the back should also contain it, omitting the space for the Treasurer's signature. As the entries on the stub are made in regular course of bookkeeping, his signature would add nothing to their evidentiary value.

But the agreement between the subscriber and his assignee may bind the former to complete the payments still due upon the stock for the latter's benefit. In that case, either the assignee should present the Treasurer's receipt when a payment has been made, and have the proper credit endorsed on the back (see Form 75), or the subscriber should obtain a separate receipt, simple in form, and assign it to the assignee. The latter may then have the proper endorsement made at his convenience, or merely keep the receipt and assignment as evidence. Such assignment may be in this form :

Form 76.

.....

For a valuable consideration to me paid, I hereby assign and transfer the within receipt and payment to Robert Finn, together with all interest created or acquired by the payment which it evidences.

Washington, D. C., May 1, 1904.

E. P. JONES.

.....

It is important to distinguish, however, between an assignment of a mere treasurer's receipt and an assignment of the more formal instrument shown by the above form, and signed by the officers whose duty it is to sign regular certificates. No contractual

relation exists between the corporation and the assignee of shares of the corporation where no certificate has been issued, and no transfer has been made on the books. The assignee's rights are of a purely equitable character, as a beneficiary of the assignor, and his only remedy, if the corporation should subsequently refuse to recognize his right to a certificate would be equitable, for the protection of his equitable rights.[1]

But where there is no statute prohibiting the issuance of certificates prior to full payment, the more formal instrument signed by the proper officers would no doubt be treated as a certificate, especially if authorized by a by-law provision.

[1] Mechanics' Bank v. Seton, 1 Pet. (U. S.) 299.

CHAPTER IX.

Promoters of Corporations and Promotion Contracts.

86. General View—Definitions and Distinctions.
87. Promoter's Contract with Incorporators.
88. Promoter's Agreement with Incorporators, with Provision for His Compensation.
89. Promoter's Contract Should Contain Specific Terms.
90. Proceedings Taken to Carry Out Promoters' Agreements.
91. Relation of Shareholder Not Created by Such Agreements.
92. Agreements Similar to Promoters' Agreements After Incorporation but Before Issuance of Stock Certificates.

§ 86. General View—Definitions and Distinctions.

The interpretation and application usually given by the courts and law writers to the term "promoter" is too limited. The definition of the term is as follows :

> "One who initiates a corporate enterprise. He brings the incorporation and the capital necessary to prosecute the contemplated business together, and is active in setting the corporate machinery in motion." [1]

One among all who concern themselves in bringing about a co-operation among incorporators of a company may be more active than others, but whoever contributes either by way of effort or money, or by becoming a party to a preliminary agreement for the formation of a corporation, initiates it,—at

least aids in projecting and initiating it, and comes within the above definition.

All who meet and sign an agreement to form a corporation, thereby "promote" a corporation. Such agreements are, therefore, discussed under this head, and the parties thereto are classed as promoters. In this broad sense, every corporate enterprise has promoters at its inception. We cannot conceive of a corporation coming into existence without some one actively interesting himself, and devoting effort and organization, and so becoming a promoter.

A distinction exists between promotion agreements and stock subscriptions made prior to incorporation, though it would be sometimes difficult to point it out. This difficulty arises from the fact that the same agreement often combines both the promotion and the subscription feature. Whatever difference exists will be seen by comparing the last preceding chapter and its forms with those of the present chapter. It has sometimes been vaguely asserted that a promoter occupies a fiduciary relation to the corporation formed through his efforts, and to its stockholders. It is true that at a certain stage of the proceeding his relation becomes confidential, and, he is bound to make full disclosure of all his transactions. But that stage is only reached, if ever, after he has ceased to be a promoter, and has become an associate with others in the enterprise. He may not become an incorporator or stockholder at all, or have any understanding to that effect, in which case no fiduciary relation ever arises.

A promoter may sell property to an association of

persons who contemplate becoming the organizers of a corporation at any price they are willing to pay, no matter how much or how little it may have originally cost him, nor is he bound to make any disclosure as to its cost, provided he make no fraudulent representations, such as would render a contract voidable under ordinary circumstances. But from the moment that he and others begin to organize themselves into an inchoate corporation he assumes toward his associates a fiduciary relation which extends to all who may subsequently come in. From that time forward he cannot, any more than they, retain an individual profit realized from dealing with the common property or funds, without the common consent.[2]

Although the promoters of a corporation come into it at its creation as its only stockholders, directors and officers, yet they are not the corporation, and their contracts among themselves with reference to the corporate enterprise, are not the contracts of the corporation, nor do they in any way bind it, or control it as a legal person unless afterwards ratified by it, or it makes itself a party thereto.[3]

§ 87. Promoter's Contract With Incorporators.

Where the promoter has purchased, or obtained options, upon land, or other property, and has found persons willing to associate themselves together and form a corporation, and in its name purchase from him such land or property, his contract with them may be as follows:

Form 76.

.....

Know All Men By These Presents, That Whereas. I. John S. Rowe, have purchased a tract of land from Enoch Ross, embracing about 240 acres, another tract of about 70 acres from J. F. Sharp, another tract of about 200 acres from Reuben Foss and others;

And Whereas, a corporation is about to be formed, to be known as the Rowe Land and Water Company, the articles of which are now drawn; and whereas, the subscribers to the stock of said corporation are the real purchasers of said lands, although the contracts are made to me. Now, therefore, I hereby agree that as soon as the organization is completed, so that said Company can take the title to said lands, I will immediately convey all my right. title and interests in said lands and all water rights thereunto pertaining, and will assign all contracts that I may hold affecting said lands or water rights to said Rowe Land and Water Company.

In Witness Whereof, I have hereunto set my hand, this, the 1st day of March, 1904.

(Signed.) JOHN S. ROWE.

.....

§ 88. Promoter's Agreement With Incorporators, With Provision for His Compensation.

The promoter's compensation does not appear in the last preceding form. It may, in such case, consist in shares of stock issued as full paid, in exchange for "services."

But where the promoter does not take stock in the corporation upon its formation in payment, in whole or in part, for his services, or as a profit upon his investment, he may be paid in any way agreed upon. A common method is for him to make a

formal assignment of all his rights and interests to the corporation for a stipulated sum. Such assignment may be as follows :

Form 77.

.....

This Indenture, made the 2nd day of January, in the year of our Lord, one thousand nine hundred and four, between John S. Rowe, of the County of ....., State of ....., the party of the first part, and The Rowe Land and Water Company, a corporation duly organized and existing under the laws of the State of ....—....., having its principal place of business at the City of ....., County of ....., State of ....., the party of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of fifty thousand dollars, ($50,000), gold coin of the United States of America, to him in hand paid by the said party of the second part, and other good and valuable considerations, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all those certain lots, pieces or parcels of land situate, lying and being in the County of ....., State of ...., and bounded and particularly described as follows, to wit :

(Here follows description.)

Together with all and singular, the water, water rights, tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To Have and to Hold, all and singular, the said premises, together with the appurtenances, water and water rights, unto

the said party of the second part, and to his successors and assigns, forever.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

(Seal.) JOHN S. ROWE.

(Acknowledgment.)

....

§ 89. Promoters' Contracts Should Contain Specific Terms.

Such agreements may be simple and concise, or very elaborate. More than one form will be given. The first form given is not sufficiently definite and is not commended for use, but is simply an illustration of those often inadvertently employed and resulting in litigation.

Form 78.

....

(Not recommended for use.)

We, the undersigned, for and in consideration of the sum of one dollar, in hand paid by each of the parties to the others, the receipt whereof is hereby acknowledged, agree that we will jointly purchase the following real property, consisting of real estate and water, situated in ..... County, State of ....., and known and described as follows, to wit: The tract of land amounting to 20 acres, more or less, known as the Ross tract; the tract of 50 acres, more or less, known as the Sharp tract; the tract of 200 acres, more or less, known as the Rossmore tract; making a total of land amounting to about 450 acres, for which we agree, each with the others, to pay the sum of $50,000, we each agreeing to pay for and take the respective interests set opposite our names.

We furthermore agree that we will, as soon as possible,

meet for the purpose of, and organize and perfect a corporation to be known by such name as may be agreed upon; the object and purpose of said corporation being for the purchase and sale of land and water in said ..... County, and elsewhere, and we hereby agree to so organize such company at as early a date as practicable, and agree to take our proportionate equal number of shares of stock in said incorporated company and agree that said land so purchased by us shall be transferred to said company, to be organized as above indicated.

This January 2, 1904.

(Signed.)

JOHN S. ROWE,	One-fifth
ENOCH ROSS,	" "
J. F. SHARP,	" "
REUBEN FOSS,	" "
ROBERT ROSSMORE,	" "

.....

The absence of any remedy for the enforcement of subscriptions taken prior to organization, unless the corporation in contemplation is actually created and organized, has resulted in their disuse to a great extent. An oral agreement among the incorporators is now often made to serve all the purposes that a written agreement formerly served. Still, a formal writing containing mutual covenants facilitates the apportionment of the shares, and may prevent delay and litigation as to the number of shares each is entitled to have issued to him after organization. For instance, where, as is oftener the case than otherwise, the parties participating in the formation of the corporation are to take part or all of its stock, and property is to be turned over or conveyed to it in payment, there should be a distinct understanding beforehand, just what property, real or personal, or both,

each person is to contribute, the value in money at which it is to be appraised, or if it is simply to be accepted for stock without appraisement, the number of shares that are to be issued for it.

As above stated, if one signing such an agreement should refuse to sign articles of incorporation, and without his doing so, the attempt to form a corporation proved abortive, the others interested with him would be practically remediless, since there could be no standard for the measurement of damages in such a case, and they could only recover nominal damages. It is always more satisfactory, however, and may obviate disagreements and litigation if the exact character of the corporation to be formed, its purposes, the various interests, etc., be accurately and specifically set forth. The next form contains such specifications. It provides compensation to the promoter, consistng of both money and shares.

Form 79.

.....

This Agreement, made and entered into this 1st day of March, 1904, by and between John S. Rowe, of the County of ....., State of ....., party of the first part, and John Goode, and E. P. Jones, of the County of ....., State of ....., parties of the second part, witnesseth:

That the parties hereto agree to immediately form a corporation for the following purposes, viz.: To buy, sell, lease and mortgage real estate; to buy, sell and hypothecate all kinds of personal securities; to loan money on any kind of security; to mine for oil, gas, water, asphaltum, or any other substance; to buy, sell and lease oil lands; to construct oil wells; and to do anythng necessary to carry on a general business for the production and sale of oil, water, gas, asphaltum,

or any other substance mined from the ground; to buy and sell oil, gas, water, asphaltum, and like products upon commission, or otherwise; to construct tanks and houses for the storage of oil, and to do a general storage business; to conduct a general mercantile business.

That the amount of the capital stock of the said corporation shall be $1,000,000, divided into 100,000 shares of the par value of $10 each, one-half of which shall be issued to and belong to the party of the first part and the other half of which shall be issued to and belong to the parties of the second part, except that a sufficient amount of said stock to qualify the directors of said corporation shall be issued to persons other than the parties of the first and second part hereto.

The corporation to be so formed shall have six directors, three of whom shall be chosen by the party of the first part and the remaining three by the parties of the second part; and the selection by the party of the first part and the selection by the parties of the second part shall be final and conclusive as to both parties hereto, that is to say, the directors chosen by the party of the first part shall be ratified and confirmed by the parties of the second part, and the directors chosen by the parties of the second part shall be ratified and confirmed by the party of the first part.

The parties of the second part agree to immediately advance to the party of the first part the sum of $500 in consideration of these presents.

It is further agreed that the corporation so formed shall immediately procure to itself from the Americus Petroleum Company, a corporation, for the term of 15 years, a lease of all lands now held by said corporation, either by location, ownership or lease, upon the terms and conditions set forth in that certain instrument of lease, a copy of which is hereto attached and made a part hereof, which said instrument of lease shall contain an option for the purchase of said lands upon the terms and conditions set forth in said instrument hereto attached. The parties of the second part shall advance all moneys necessary for the development of said lands,

and shall, within thirty days from the execution of the lease herein provided for, begin the construction of a well on said premises, and shall diligently prosecute the construction thereof to completion; and shall commence the construction of a second well within 15 days from the completion of the first well, and will diligently prosecute the same to completion, and shall further prosecute the work of the development of said lands diligently during the full term of the lease, and for a failure so to do, all rights and interests held by them in said lands shall cease and be forfeited, except as to the acre tracts around each well drilled otherwise provided for said lands.

In the case of the purchase by said corporation hereafter to be organized the said company so to be organized will pay therefor the sum of $20 per acre; the parties of the first and second parts shall advance the moneys necessary to make the payment for said lands in equal parts, provided that the parties of the second part shall be entitled to a credit on account of said purchase of all sums advanced by them for the development of said lands, including the sum of $500 advanced to said party of the first part, and to the amount of one-half the value of said lands at said price the party of the first part agrees that the parties of the second part shall be reimbursed for said expenditure so made by them in case of said purchase in the manner aforesaid; provided that the amounts so advanced by the parties of the second part shall not exceed one-half the amount of the purchase price of said lands at the rate above prescribed; and provided also, that in case the said corporation shall not elect to purchase said lands under its option in said lease, the parties of the second part hereto shall be reimbursed for any advance or expenditure made by them hereunder from the production of oil on said premises, but not otherwise.

It is further agreed that the party of the first part shall name the President, and the party of the second party shall name the Secretary and the Treasurer for the corporation to be formed for the first year of its existence; and it is further agreed that no salary shall be paid to any officer of said corporation

until hereafter mutually agreed upon between the parties of the first part and second part.

It is further agreed that an accurate account shall be kept by the parties of the second part of all expenses incurred by them in the work of developing said lands, and that no unnecessary expenditure shall be incurred therein. and the party of the first part may, at any and all times, have access to such accounts and be informed thereof. In case of the failure of the corporation to be formed as herein provided, to purchase said lands, the party of the first part shall not be liable for any expenditures made by the parties of the second part in pursuance of this agreement or said lease.

In case the lease herein provided for shall not be executed this agreement shall become null and void and the $500 advanced by the parties of the second part to the party of the first part shall be immediately refunded to them.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written.

JOHN S. ROWE, (Seal.)
JOHN GOODE, (Seal.)
E. P. JONES, (Seal.)

.....

§ 90. Proceedings Taken to Carry Out Promoter's Agreement.

Usually a meeting is held among the subscribers, after the desired amount in subscriptions is obtained, and a number of them are selected to execute articles. Those so selected usually designate themselves in the articles as directors for the first year, and specify the amount of stock which has been subscribed, and by whom. But it is not necessary that all who have subscribed be named in the articles. As to whether any effective remedy exists against those who do not sign the articles is a different question. At such

preliminary meetings a committee is usually appointed to procure further subscriptions. Such committee may be also empowered to collect such subscriptions as are made payable prior to incorporation, or some bank may be designated to hold all subscription papers in escrow and to receive payments.

The business in hand may be so urgent as not to admit of the delay incident to the complete organization before consummating it. For instance, a number of individuals may obtain a short option upon a tract of mineral or agricultural land, or a valuable water right, the exercise of which is the main incentive to the formation of the corporation, and which would be lost by lapse of time, if not exercised before the corporation can be created and fully organized. In all such cases the appointment of a committee or general agent prior to incorporation is necessary. Whatever money is needed to secure the property or right to be exploited by the corporation must be deposited with such committee or agent, and the subscribers advancing it are entitled to credit therefor on subscription account. The money may be paid to the persons who have given the option or deposited, together with deeds agreements, etc., from the latter to the proposed corporation in escrow.

The following principle governs subscription agreements made before incorporation. The promise is original, voluntary, or in the nature of a mere open proposition. But, when accepted and acted upon by the parties authorized to do so, before he retracts or repudiates it, he loses the right to revoke it.[5] If the ageement precedent to incorporation amounts to

a mere offer to become a shareholder without specifying the number of shares the party agrees to subscribe for, and there is no delivery of the agreement to a committee or agent appointed to represent the corporation and to deliver it to the corporation when formed, such agreement is void for uncertainty as well as non-delivery to a party entitled to receive it. But if the agreement be sufficiently definite, be delivered to a proper committee or agent, and afterwards be delivered to the proper corporate officer, it constitutes a binding and enforceable contract of subscription.[6] And although no particular form of acceptance is essential in order to constitute an offer to become a shareholder, a binding contract, which the corporation can enforce, yet there must be some unequivocal act on the part of those representing the corporation, so that there can be no doubt of the obligation of the corporation to recognize the person making the offer as a shareholder, and to issue to him a certificate.[7]

§ 91. Relation of Shareholder Not Created by Such Agreement.

A contract to become a shareholder does not constitute a shareholder. He does not become such until all the conditions are performed on the part of the corporation; and until such performance, he may refuse to proceed and consummate the agreement by taking and paying for the shares. In that case, the only remedy of the corporation is a suit for damages for breach of contract.[8]

§ 92. Agreements Similar to Promoter's Agreements After Incorporation, but Before Issuance of Stock Certificates.

Very similar to such agreements as have been discussed in preceding sections of this Chapter are those made after the corporation is organized, but before any certificates have been issued.

It has been previously stated that the stockholders may agree among themselves as to the payment for shares in property, or services, or as to other terms upon which stock may be issued. It was also stated that the directors may accept property or services for stock. The stockholders may also mutually agree among themselves for a distribution of all or part of the stock. Such agreements should be in writing, and, if possible, signed by all the incorporators before any certificates are issued. The advantage of the mutual agreement over the action by directors consists in the fact that any dissenting shareholder may question the adequacy of the consideration, or the good faith of the parties to the transaction, when in the latter form, whereas, if done by unanimous agreement among the incorporators before the issuance of any certificates, and before any indebtedness has been contracted, the matter becomes conclusive upon the corporation, all those at the time inetrested, and all who may afterwards become stockholders or creditors.

Such agreement may be as follows :

Form 80.

.....

This Agreement, made the 22d day of May, 1904, by and

between B. L. Finch, J. F. Cross and John D. Marcum, all of the County of ....., State of ....., the parties hereto witnesseth :

That for and in consideration of the sum of one dollar in lawful coin of the United States, respectively paid by the parties hereto, and the covenants mutually made herein, to be kept and performed by the several parties hereto, the said Finch, Cross and Marcum, their heirs and assigns, do agree as follows, to wit:

1. Whereas, the said B. L. Finch is the discoverer and proprietor of a cough mixture, the name of which is copyrighted as "Excelsior;" also of an ointment for the cure of rheumatism, which he proposes to copyright, both of which medicines and complete formulae of compounding and preparing is known only to said Fnch; and also certain other medicines, and medicines manufactured from and containing health-giving properties, and certan formulae, drawings, cuts, and means of advertising said medicines.

2. Whereas, said John D. Marcum is the proprietor of 160 acres of land located in Sections 28 and 21, Tp. 26 N. R. 5 E., M. D. M., patented, on which said lands are quantities of the raw material for the manufacture of said medicines; also a distillery, condenser with all tools, barrels, appertaining thereto, situated on Section 21, Twp. 26 N., R. 5 E., M. D. M. The right of the use of water and right to use sufficient land where the distillery is now situated, for the purpose of operating the same, and the right to cut wood from said land and right of way thence, and also has applied for and is about to obtain title to the following described lands, to wit :

(Here insert description.)

3. Whereas, the said J. F. Cross is, or is about to become, the proprietor of certain other similar lands, described as follows:

(Here insert description.)

4. Whereas, the above-named persons have incorporated

themselves in'o a corporation known as the Excelsior Medical Company;

5. Whereas, all the above-named property is required for the busines of said corporation in manufacturing and seling said medicines;

Now, therefore, the said B. L. Finch, on his part, for and in consideration of 12,750 shares of the full paid capital stock of the Excelsior Medical Company, and the further sum of $1,000 cash, hereby agrees to sell, transfer, remise, relinquish and assign to said Excelsior Medical Company all his rights, privileges, franchises and emoluments of every name and character in the properties, distilleries, formulas, etc., metioned in section numbered "1" of this Agreement above mentioned.

And the said John D. Marcum, on his part, for and in consideration of the number of five thousand shares of the capital stock of the Excelsior Medical Company, full paid, hereby agrees to sell and convey to the said Company the property mentioned and set out in the section of this Agreement numbered "2"; that is to say, the title to the land, in said patented section described, is to remain in said Marcum, but all rights and privileges connected with said land and trees necessary and convenient for the purposes of the Company in extracting medicinal properties, and the distillery and condenser, now on the grounds, right of way and water rights, go to said Company.

And the said J. F. Cross, on his part, hereby agrees that for and in consideration of 12,750 shares of the full paid stock of the Excelsior Medical Company, he will sell and guarantee to the said Company the property and exclusive right to collect material for the manufacturing of said medicines on the lands in the section of this Agreement numbered "3," set out as soon as title thereto can be obtained. The parties hereto are to have reasonable time in which to comply with the agreement herein mentioned, such time to be judged by the requirements of obtaining title and perfecting

the same to property, and preparing the books of said corporation.

Witness our hands and seals, this 1st day of May, 1904.

B. L. FINCH, (Seal.)
J. F. CROSS, (Seal.)
JOHN D. MARCUM, (Seal.)

....

Such a transaction would no doubt be effective without further action other than the issue of the certificates representing the stock. There should be as many originals of the writing as there are parties to it, and an extra original should be filed with the Secretary for his protection. But such an agreement shoud be executed before the first meeting of the corporation and at such meeting should be formally ratified.

The minute entry of such action may be as follows :

Form 81.

.....

Mr. J. F. Jones then stated to the meeting the conditions of a certain Agreement, made the 1st day of May 1904, transferring the property therein named to the Excelsior Medical Company, were that the capital stock of the Excelsior Medical Company should be distributed and issued as follows :

12,750 shares of full paid capital stock of said Company to B. L. Finch; 12,750 shares of the full paid capital of said Company to J. F. Cross; and 5,000 shares of the full paid stock of said Company to John D. Marcum, and that the remaining 19,500 shares of the capital stock of said Company be reserved for sale for working capital. Whereupon, Mr. C. D. Hoag moved that the capital stock of the Ex-

celsior Medical Company be issued by the Secretary as follows, to wit :

To R. L. Finch, 12,750 shares; to A. F. Jones, 12.750; to John D. Marcum, 5,000 shares; to J. C. Tannu, 20 shares; and to C. D. Hoag, 10 shares, which said motion was voted upon and unanimously adopted.

.....

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[1] Ex. Mission L. & W. Co. v. Flash, 97 Cal. 610; Burbank v. Dennis, 101 Cal. 90.

[2] Densmore Oil Co. v. Densmore, 63 Pa. St. 43.

[3] Battelle v. Northwestern, etc., Co., 37 Minn. 89: Scadden Flat G. M. Co. v. Scadden, 121 Cal. 33; Penn. Match Co. v. Hapgood, 141 Mass. 145.

[4] See Montrery, etc., R. R. Co. v. Hilmath, 53 Cal. 123.

[5] Athol Music Hall Co. v. Corey, 116 Mass. 471; Peninsular R. W. Co. v. Duncan, 28 Mich. 138; Poughkeepsie v. Griffin, 24 N. Y. 150, 154.

[6] McClure v. People's Freight Ry. Co., 90 Pa. St. 269.

[7] Parker v. Northern Centr. R. R. Co., 33 Mich. 23; Northern Centr. R. R. Co. v. Eslno, 40 Mich. 222

[8] Thrasher v. Pike County R. R. Co., 25 Ill. 393; Rey v. Ebensburgh, etc., Plank R. Co. 27 Pa. St. 261; Sewall v. Eastern R. R. Co., 9 Cush. (Mass.) 5; Mt. Sterling Coal Road Co. v. Little, 14 Bush (Ky.) 429.

CHAPTER X.

Payments of Subscriptions; Herein of Calls or Assessments.

93. Obligation to Fully Pay Subscriptions Cannot Be Evaded—Discussion of Legal Principles Governing Herein.
94. Subscribers Not Bound to Pay Where Statutory Amount Not Subscribed.
95. Payment for Shares in Property.
96. Assessments—Levy of by Resolution.
97. Assessments—Notice to Stockholders of Levy of—Herein of Waiver.
98. Forfeiture and Sale of Stock for Non-Payment of Assessments.
99. Subscriber Need Not Wait for Call, but Cannot Give Preference among Creditors.

§ 93. Obligation to Fully Pay Subscriptions Cannot Be Evaded—Discussion of Legal Principles Governing Herein.

A corporation cannot, by a mere agreement with a stockholder, or otherwise, than by a forfeiture of his shares under the terms of the charter, general law, or by-laws, or a bona fide compromise, release him from his bligation to make full payment for his shares, without unanimous consent of the other shareholders, nor even then to the prejudice of an objecting creditor.[1] While persons may insert such conditions in their contracts of subscription as those in control of the corporate scheme are willing to accept, and refuse to pay for the shares until such conditions are complied with, yet, the agreement having been thus reduced to writ

ing, all secret conditions and reservations and collateral oral agreements between the subscribers and corporate agents are ineffective, and will be treated as fraudulent, and as no defense to an action by the corporation upon the subscription.[2] Any other subscriber who pays for his shares may object and prevent the secret and fraudulent agreement being given effect. Each has a vested right in the contract of subscription of every other stockholder.[3]

Attempts by corporate managers, in the name of the corporation, to release subscribers from all or part of their subscriptions have been, with great unanimity, held by the courts to be ultra vires, and fraudulent as to creditors and other subscribers.[4]

But collateral agreements between subscribers and promoters, whereby the latter bind themselves to take the shares in case the former become dissatisfied with their investment, are enforceable between the immediate parties thereto, regardless of the rights of other subscribers, the corporation and creditors.[5]

The enforcement of the agreement simply results in the substitution of one stockholder for another, and does not have any effect to injure other subscribers or to defraud creditors. And aside from the rights and equities between the shareholder and others, an agreement between a shareholder and a director, whereby the latter indemnifies the former against calls for unpaid subscription is valid and enforceable.[6]

It has been held that by unanimous concurrence of all the directors and stockholders, its shares of stock may be issued as paid up for less than their par value, as well as in exchange for labor and property. Stock

issued in exchange for labor or property is, upon lawful consideration, and is neither fictitious nor void as to the public.[7]

But the proposition that by unanimous consent one may become vested with all rights as a stockholder upon payment of less than the face value of shares only holds good as between the stockholder and between them and the corporation. It does not have the effect of relieving him of liability to creditors, where, after the issuance of such stock the corporation becomes unable to meet its obligations. In the latter contingency, the holder of stock so issued is liable for the difference between what he paid and the par value.[8]

Stockholders have resorted to various devices to avoid this rule of law; but the courts have ignored all forms and semblances and given effect to the rule, upon the theory that unpaid capital is a trust fund for creditors, while the corporation is a going concern and lawfully carrying on its business, it may use its funds as freely as any other individual. It is not at all hampered by the idea that it holds its assets in trust for creditors. But when it has ceased to be a going concern and the question of a division of its assets has arisen, then the claims of creditors are prior to those of stockholders.

It is upon this principle that unpaid subscriptions may be collected to provide a fund for the payment of creditors, although the corporation itself has released them, or has accepted less than the par value of the stock in full payment.

And agreements between the corporation and its

stockholders to accept less will be disregarded and treated as a fraud upon the rights of creditors, in the event of insolvency.[9]

The doctrine above stated has never been overthrown, or questioned by any respectable authority, though there are cases in which, upon very unsatisfactory reasoning, from the facts, it was held that the principle did not apply.[10] A later decision of the high tribunal which decided the cases just referred to, is in full affirmance and accord with its earlier decisions.[11]

A contrivance sometimes adopted to avoid the operation of the rule is for all corporators to come together and agree that the issue of the stock to them shall be treated as a sale of the stock by the corporation at a price less than its face value. Such devices uniformly prove ineffective where the question comes before the courts.[12]

§ 94. Subscribers Not Bound to Pay When Statutory Amount Not Subscribed.

But the foregoing rule of absolute and indefeasible liability has no application where the statute under which the corporation is formed itself makes the subscription conditional. In such case the liability is postponed until the condition is complied with.

The amount of subscriptions which must have been previously received to authorize the levying of an assessment is sometimes prescribed by statute, and the directors have no power, where such statutes are found, to levy an assessment until the statutory amount has been subscribed.[13] Of course, even in these in-

stances, the subscribers may, and frequently do, make voluntary payments of their subscriptions, and thus enable the corporation to proceed with the accomplishment of its objects. It is only intended here to explain that there is no enforceable obligation to pay until the statutory percentage has been subscribed. (See next Section.)

§95. Payments for Shares in Property.

The procurement of cash subscriptions is the natural, and ordinary, but only one of the methods of promoting or financing a corporation from its inception. At the present day, many corporations are started otherwise than upon the basis of outright cash subscriptions, as the only dependence for procuring capital to commence business.

Corporations are often formed to take over property, improved or unimproved, and to either develop it to a state of productiveness and then sell it, or operate it upon improved plans, or operate it as previously operated for a profit. One purpose is, in almost every instance, the provision of additional money capital. That is accomplished in one or the other of three ways; either the owners of the property make cash payments for a certain percentage of stock in addition to that paid for in property, or some others are taken into the scheme who are willing to make cash subscriptions; or after obtaining all the stock in exchange for their property they make a donation of shares to the corporation, which is sold in the market for cash as treasury stock, thus realizing cash for the uses of the corporation.

The resolution accepting property in payment for stock, whether by a stockholders' meeting or directors, may be as follows :

Form 82.

.....

Whereas, William Wilton offers in writing to sell, assign and convey to this Company the entire plant of the Economic Paper Company at Providence, Rhode Island, as set forth in a statement and schedule attached to his said offer, in exchange for all the unsubscribed capital stock of this corporation, to wit, seven hundred shares, to be issued to him in exchange for said property as full paid ; and, whereas, it appears that the said property is necessary for the purposes of this corporation, and is at least equal in value to said stock.

Therefore, resolved that said offer be accepted, and, upon the execution and delivery of sufficient conveyances in fee simple of all the title an interest of the said Wilton in and to the real estate upon which said plant is situated, or which is used in connection therewith, as specified in said offer, statement and schedule, and delivery of all of the personal property specified to this corporation, the President and Secretary are authorized to issue a certificate or certificates representing said seven hundred shares of stock to the said William Wilton, or to his order.

.....

In case of a corporation formed for the express purpose of taking over the property of another corporation, or of individuals, it is doubtful if any resolution be necessary. If one be adopted, it may be in the same form as the foregoing. Of course, even in that case conveyances of real estate must be made, and personal property delivered.

Where a corporation has been formed to take over

and develop existing property, the incorporators are, as a rule, for the most part, mere dummies. After the organization is complete, the owner of the property to be taken over makes a proposition to the corporation, which may be as follows:

Form 83.

.....

To the Stockholders and Directors of the New Era Printing Company,

Washington, D. C.

I hereby offer you in exchange and full payment for the entire capital stock of your company, including the shares subscribed for by the incorporators, the entire plant of the printing office heretofore conducted by the undersigned at 79 Printing House Square, in the City of Washington, District of Columbia, consisting of a full complement of metal type, power presses, hand presses, etc., all of which will more fully appear from the schedule attached hereto, all of which is in good condition and of the value of at least $75,000.

If the above proposition be accepted, the entire capital stock of your Company, excepting the shares subscribed for by the incorporators, is to be issued to my order full paid, conditionally upon the delivery to an agent of your company, duly authorized by you of said plant, including all the articles named in said schedule, the same when so delivered to be in good serviceable condition. In the event of the acceptance of the above proposition, I agree either to assume the payment of the subscriptions already made to the capital stock and to have the certificates representing the same issued to persons to be named by me, or that the subscribers therefor shall make payment according to the terms of their several subscriptions and continue as stockholders.

In either event I also agree to turn over to the Treasurer of your corporation of the shares issued to me, not less than

one hundred shares of the par value of $100 each. Such stock to be sold as Treasury stock for the best price obtainable, with a view to providing working capital for the Company.

This January 20, 1904.

Respectfully,

JOHN D. WARDLAW.

.....

Probably the Board of Directors, in most of the States, would have authority to entertain such a proposition, and conduct the negotiations to a close. But it would usually expedite matters and avoid friction, disputes and complications to submit the whole matter to a meeting of stockholders, after which the directors could carry out their will. The stockholders might, if desirous of accepting the foregoing proposition, adopt a resolution as follows:

Form 84.

.....

Whereas, a proposition from John D. Wardlaw, bearing date of January 20, 1904, has been received offering to exchange for the unsubscribed capital stock of this corporation, to be issued to him full paid, certain property in his offer and in the schedule annexed thereto set forth and described, and to donate 100 shares of the stock, to be issued to him as treasury stock; and whereas it appears to the stockholders of this company that the said property is desirable for the purposes of this company, and is reasonably worth the price placed upon it by the said Wardlaw, and that it will be to the interest of this company and all its stockholders to accept this proposition;

Therefore, resolved that said proposition be and the same is hereby approved and accepted, and the Board of Directors of this corporation are hereby authorized and directed to take all necessary and proper steps to make the said exchange and issue of stock and to carry the same fully into effect.

.....

Action must then be taken by the Board of Directors, which may be by resolution as follows:

Form 85.

.....

Be it resolved, pursuant to authorization and direction, by the stockholders of this corporation, the New Era Printing Company, in meeting assembled, on the 1st day of March, 1904, the property mentioned, described and scheduled by John D. Wardlaw, in and accompanying his offer of January 20, 1904, be, and the same is hereby accepted in full payment for all the unsubscribed shares of the capital stock of this corporation, and the President and Secretary of this corporation are hereby authorized and directed to accept delivery of said property, and to issue in exchange therefor the entire unsubscribed stock of this corporation, as full paid stock, to the said John D. Wardlaw, or to such person or persons, as may be in writing designated by him.

.....

Sometimes the person making a proposition of this general character prefers to obtain ownership or control of all the stock, including that already subscribed. In that case he will first have arranged with those who have already subscribed for a purchase of their subscriptions, conditioned upon the acceptance of his offer to exchange his property for the unsubscribed shares. In his offer he will then mention this conditional arrangement.

The conditional assignment by the subscribers may be as follows :

Form 86.

.....

We, the undersigned, being all the present subscribers to the capital stock of the New Era Printing Company, in consideration of the sum of one dollar to each of us in hand

paid, receipt whereof is admitted, and in consideration of certain undertakings and agreements, do hereby sell and assign to John D. Wardlaw all our rights in said corporation arising from and incidental to our having subscribed for the shares of its capital stock, appearing opposite our respective names below.

This assignment is upon the condition that said corporation accept the proposition made to said corporation by the said Wardlaw on the 20th day of January, 1904, involving an exchange of property for the entire subscribed capital stock, and that this exchange be entirely consummated on both sides.

(Signatures of Stockholders.)

.....

§ 96. Assessments—Levy Of, By Resolution.

Assessments are levied by resolution. Great care should be taken that the resolution be in proper form and that nothing essential be omitted. The following is sufficient and easily adaptable:

Form 87.

.....

Be it resolved that the sum of ten thousand dollars ($10,000) be and is hereby called in from the stockholders of this corporation for the purpose of meeting the requirements of a resolution passed at a special stockholders' meeting held on March 10th, 1904, to dispose of the present plant of this company and substitute one comprising more modern machinery, and an assessment of ten per cent., being ten dollars for each share, be and the same is hereby levied upon each and every share of the subscribed capital stock, payable on or before the 25th day of May, 1904, to the Treasurer of this corporation, at this office, No. 50 Printing House Square, in the City of Washington; and that the 25th day of June, 1904, be and is hereby fixed as the day on which said assessment shall become delinquent, and the 26th day of July, 1904, be and is hereby fixed as the day for the sale

of all stock delinquent upon this assessment. The Secretary is hereby authorized and directed to give all notices required by this resolution, and the provisions of the statutes and by-laws of this corporation pertaining to assessments, delinquencies and sales.

.....

§ 97. Assessments—Notice to Stockholders of Levy of. —Herein of Waiver.

The notice of the levying of an assessment may be as follows :

Form 88.

.....

Office of
NEW ERA PRINTING COMPANY.
50 Printing House Square,
Washington, D. C.

Notice is hereby given that by resolution of the Board of Directors, adopted on the 15th day of April, 1904, an assessment of ten per cent. on the subscribed capital stock of the above named corporation was called for, to be paid to the Treasurer, at the office of the company, on or before the 15th day of May, 1904.

This April 16, 1904.

J. F. WESTON,
Secretary.

All checks should be made payable to
JAMES KNOX,
Treasurer.

.....

The above form is suitable for sending by mail as well as for publication in newspapers.

Under the statutes of some of the States, notice of an assessment must be given a stated length of time before the date fixed therein for payment. Such requirement may be waived, however, either by complying, or signing the written waiver. Such an assess-

ment would be invalid and non-enforceable as to all objecting stockholders. The waiver may be general, or it may relate to a single assessment. The general form may be as follows :

Form 89.

.....

We, the undersigned subscribers to the capital stock of the New Era Printing Company, a corporation, hereby waive all the requirements of law as to notice of assessments upon the shares of stock of said corporation subscribed by us. and by each of us respectively, and as to the time and place of payment of any such assessments, and we hereby agree to pay to the Treasurer all or any part of the amount to be paid upon our subscriptions, in such amounts and at such times and places as may be prescribed by the Board of Directors of said corporation.

Washington, D. C., Jan. 15, 1904.

E. P. JONES.
M. L. BENNETT,
ASA ROBERTS,
J. F. WESTON.

.....

Under such a waiver the directors may undoubtedly call for the entire subscribed capital at once.

§ 98. Forfeiture and Sale of Stock for Non-Payment of Assessments.

Upon failure of one or more of the stockholders to respond to the call, or notice, to pay assessments, the next step is to enforce payment, or, in default of payment, a forfeiture of the shares. The remedies by action by the unpaid subscription and by sale are concurrent.

The sale may be upon the notice prescribed

by statute or by-law provisions not inconsistent with the statute, and may read as follows:

Form 90.

.....

DELINQUENT SALE NOTICE.

NEW ERA PRINTING COMPANY.—Location of principal place of business, 50 Printing House Square, Washington, D. C.

NOTICE.

There is delinquent upon the following described stock, on account of assessment (No. .....) levied on the 18th day of May, 1904, the several amounts set opposite the names of the respective stockholders, as follows:

Names.	No. of Certificate.	No. of Shares.	Amount
Enos Roop.....	5	20	$200
John Diggs	16	45	450
Henry Johnson	11	15	150

And in accordance with law, and an order of the Board of Directors, made on the 18th day of January, 1904, so many shares of each parcel of such stock as may be necessary will be sold at public auction at the office of the company, No. 50 Printing House Square, Washington, D. C., on SATURDAY, the 12th day of August, 1904, at the hour of 2 o'clock P. M. of said day, to pay said delinquent assessment thereon, together with costs of advertising and expenses of sale. J. F. WESTON, Secretary.

.....

§ 99. Subscribers Need Not Wait for a Call, But Cannot Give Preference Among Creditors.

A stockholder need not wait for a call. He may at any time pay to the corporation the amount of his unpaid subscription to its stock, in discharge of his liability thereupon. But he cannot take upon himself the authority of the corporation and voluntarily pay his

stock subscription to one of its creditors in preference to other creditors and to their injury. Nor can he, by making such payment without authority from the corporation require the right to have it entered upon its books as a payment upon his subscripton.[14]

---

[1] Melvin v. Lamar Ins. Co., 80 Ill. 459.

[2] Blodgett v. Monill. 20 Vt. 509; White Mountain R. R. Co. v. Eastman, 34 N H. 124; Robinson v. Pittsburgh, etc., R. R. Co., 32 Pa. St. 334; Stanhope's Case, L. R. 1 Ch. App. 161; Minor v. Bank, 1 Pet. 46; Henry v. Vermillion, etc., R. R. Co., 17 Ohio 187; Downie v. White, 12 Wis. 176.

[3] Chandler v. Brown, 77 Ill. 333.

[4] Burke v. Smith, 16 Wall (U. S.) 390; See Chauteau v. Dean, 7 Mo. App. 210; Thompson v. Reno Sav. Bank, 19 Nev. 103; Monver v. Nashville, etc., R. R. Co., 87 Tenn, 262; Connecticut, etc., R. R. Co. v. Bailey, 24 Vt. 465; North Carolina R. R. Co. v. Leach, 4 Jones L. (N. C.) 340; Mississippi, etc., R. R. Co. v. Cross, 20 Ark. 443; Smith v. Tallahassee, etc., R. R. Co., 30 Ala. 650; Minnesota Threshing Machine Co. v. Davis, 40 Minn. 110; Robinson v. Pittsburgh, etc., R. R. Co., 32 Pa. St. 334; Greenville, etc., R. R. Co. v. Coleman, 5 Rich. L. (S. C.) 118; Scoville v. Thayer, 105 U S. 143; Union Mut. L. Ins. Co. v. Frear Stone Mfg. Co., 97 Ill. 537.

[5] Magan v. Struthers, 131 U. S. 246; Meyer v. Blair, 109 N. Y. 600.

[6] Barker v. Allan, 5 N. & N. 61.

[7] Smith v. Martin, 135 Cal. 247.

[8] Wood v. Dammer, 3 Mason (U. S.) 308; Scoville v. Thayer, 105 U. S. 143; Upton v. Thibilcock, 91 U. S. 45; Sanger v. Upton, 91 U. S. 56; Vermont Marble Co. v. Decley, etc., Co., 135 Cal. 579; Thompson v. Reno Sav. Bank, 19 Nev. 103; Hill v. Ataka, etc. Co. 124 Mo. 153; Coleman v. Home, 154 Ill. 458; Hospes v. Northwestern Manfg. Co., 48 Minn. 174; Crowfoot v. Thatcher, 19 Utah. 212.

[9] Sawyer v. Hoag, 17 Wall. (U. S.) 610; Upton v. Tribilcock, 91 U. S. 48; Scoville v. Thayer, 105 U. S. 143; Vermont Marble Co. v. Dealey, etc. Co., 135 Cal. 579.

[10] See Clark v. Bever, 139 U. S. 96; Fogg v. Blair, 139 U. S. 118; Handley v. Stultz, 139 U. S. 417.

[11] Camden v. Stuart, 144 U. S. 104.

[12] See Vermont Marble Co. v. Decley, etc. Co. 135 Cal. 579.

[13] Herbert Kraft Co. Bank v. Bank of Orland, 133 Cal. 64; and cases cited.

[14] Welch v. Sargent, 127 Cal. 582.

CHAPTER XI.

Nature and Various Kinds of Stockholders' Liabilites.

100. Extent of Liability for Unpaid Subscription.
101. Special Statutory Liability.
102. Collection of Assessments after Full Payment for Stock.
103. Precautions to Avoid Personal Liability upon Sale of Stock.

§ 100. Extent of Liability for Unpaid Subscription.

Extended discussion was devoted in the next preceding chapter to the indefeasible character of the stockholder's liability for unpaid subscriptions. Something will here be added as to the stockholder's relation to other stockholders and to creditors with respect to his subscription; also with reference to an additional liability imposed by statute.

The liability of a stockholder to pay the full amount remaining unpaid upon his stock is not conditional upon, whether other stockholders have made payments, nor is it limited in any way by the other debts of the corporation. A creditor, having obtained judgment against the corporation which remains unsatisfied, may single out one stockholder and compel him to pay the entire balance remaining unpaid on his stock in satisfaction of the judgment, if the whole of it be required.[1]

§ 101. Special Statutory Liability.

In several States, a special liability to creditors is imposed upon stockholders, additional to that for un-

paid subscriptions to capital stock. The amount of such liability is usually measured by the par value of the stock held, whether the same be fully paid for or not. This liability is a different matter from that for unpaid subscriptions, and is usually distinguished from the latter by the designations, "statutory liability," or "individual liability."

It is governed by somewhat different rules of proceedure when it comes to be enforced. Being purely for the benefit of creditors, one or more creditors may sue upon it directly, and immediately upon exhausting their remedy against the corporation, and in cases of hopeless or adjudicated insolvency, they may enforce it, without resorting to suit against the corporation. Such statutes usually provide that if any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt. He may thus discharge his statutory liability as a stockholder without waiting to be sued, and payment, if in good faith, will bar an action to collect anything further from him.[2] It is not to be understood, however, that he may thus discharge himself by paying to the full extent of the face value of his stock to one creditor, and thereby exempt himself from payment to others, where there are others. Unless the identity of all the creditors and the ascertainment of the aggregate indebtedness have been ascertained to a reasonable certainty, the stockholder would be prudent in postponing payment until the rights and liabilities of all parties have been ascertained by a judicial proceeding.[3]

Nevertheless, it will obviate the annoyance of litigation to make full payment, where he is assured that no valid defense exists against the claims, and there is no doubt as to the personnel of creditors and the amounts of their respective claims. To ascertain his liability to each he must proportion his entire liability to the amount of each claim and to the entire amount of subscribed capital stock. For instance, if the capital stock which has been subscribed be $100,000, divided into 1,000 shares of $100 each, and A hold 100 shares, and the total indebtedness of the corporation be $10,000, A's individual liability, (in addition to paying to the corporation any sum which may remain unpaid on his shares), will be $1,000. Under the statutes and constitutional provisions of some of the States A would have to pro-rate this amount among all the creditors according to the amounts of their respective claims. Under others he might get rid of his liability by paying it to any creditors he saw fit to select. The constitutional and statutory provisions vary considerably in their phraseology, and even where those of two States are substantially the same, the courts of such States are not in entire accord in construing them; so that a further discussion here is impracticable.

The authors of the most voluminous works on the law of private corporations have failed to reduce to a system the tangled mass of legislation on the subject and have made no serious attempt at harmonizing the decisions.

It will usually, however, be greatly to the interest of creditors and all solvent stockholders to

have a judicial liquidation of the affairs of a corporation the moment its insolvency is ascertained or it becomes clear that the purposes for which it was formed cannot be accomplished, or that they have been fully accomplished, so that its operations have come to a stand-still. This will serve to render available, while fresh, any defenses against claims preferred, and fix, as well as permit,of speedy enforcement of the rights between all parties in interest.[4]

In addition to the special statutory liability just noticed, other special liabilities are sometimes imposed: for instance, an absolute personal liability to laborers, material men, etc. There is also the liability for illegal withdrawals of capital in the form of dividends declared, when the condition of the corporation does not justify it; and paid otherwise than out of profits. But these liabilities, while simple of adjustment in detail, would require more elaborate discusion than their importance appears to demand for present purposes.

§ 102. Collection of Assessments After Full Payment for Stock.

In addition to the forms of liability previously discussed, there is in some States, a liability to pay assessments after the stock has become fully paid. This is in some respects concurrent with the individual statutory liability, additional to that for unpaid subscriptions, since if the power to levy and collect assessments be fully exercised by the corporation, it is clear that no corporate indebtedness will remain unpaid, and there will exist no necessity or occasion for in-

voking remedies against stockholders individually.

The power to make and enforce assessments upon stockholders is purely statutory, that is, it did not exist at common law. A power to make calls for unpaid capital exists without statutory authority; but that is a different matter. Much misunderstanding has arisen from the undiscriminating use of these terms. The duty of the subscriber for shares to pay in part or all the capital represented by his shares rests upon contract; but no further payments can be exacted of, or enforced against him by the corporation, unless a statute authorizing it exists at the date of his subscription.

The statutory provisions on the subject vary greatly, and are variously construed. To ascertain whether such liability exists at all, and its extent, requires an investigation and study of the statutes and decisions in the particular jurisdiction where the question arises.

§ 103. Precautions to Avoid Personal Liability Upon Sale of Stock.

A stockholder having fully disposed of his stock, it peculiarly behooves him to have the transfer entered on the books of the corporation, where an individual liability is imposed upon stockholders for corporation indebtedness.

Such statutes are found in a majority of the States, and usually impose the liability for a proportionate amount of such indebtedness not only for the stock standing upon the books in the name of a party, but also upon the actual owner of the stock, whether stand-

ing in his name or in the name of another. The purpose of so wording such statutes is to circumvent the device of a responsible party, the real owner of stock, holding it in the name of an irresponsible dummy, and thus defeating the policy of the statutes and depriving creditors of the security intended to be afforded by the law.[5]

---

[1] Hatch v. Dana, 101 U. S. 205; Barnes v. Babcock, 95 Cal. 582; Waller v. Merced Academy Assn., 126 Cal. 582.

[2] Welch v. Sargent, 127 Cal. 72.

[3] See Greenleaf v. Jacks, 133 Cal. 506.

[4] See Harmon v. Page, 62 Cal. 448; Baines v. Babcock, 95 Cal. 590; Lamar Ins. Co. v. Gulick, 102 Ill. 41; Hatch v. Dana, 101 U. S. 205.

[5] See Dake v. Huntington, 130 Cal. 272; Abbott v. Jack, 136 Cal. 510; Baines v. Babcock, 95 Cal. 593; O'Connor v. Witherby, 111 Cal. 528; Bank v. Case, 99 U. S. 631; Thompson v. Bank, 19 Nev. 103.

CHAPTER XII.

Directors and Board of Directors.

104. Qualifications of Directors.
105. Term of Office.
106. Express Powers of the Board.
107. Increasing and Decreasing Membership of the Board.
108. Compensation of Directors.
109. Fiduciary Relation of Director.
110. Filling Vacancies.
111. Selection of Place for Deposit of Corporate Funds.
112. Appointment of Officers and Agents.
113. Power of Directors to Change the Place of Business.
114. Special Meetings of the Board.
115. Resignations and Action Thereon by the Board.
116. Removal of Directors.
117. Notices of Meetings of the Board.
118. Call and Waiver in Lieu of Notice.
119. Personal Liability of Directors.

§ 104. Qualifications of Directors.

The qualifications, as well as the method of electing directors, is usually provided for by statute. Especially are such statutes almost sure to be found in those States where corporations are created under general law. They are usually required to be stockholders; but, if neither the charter nor general law require it, that is not necessary. Such requirement is satisfied if the person elected be the legal, as distinguished from the equitable owner. They are often required by statute to be residents of the State where the corporation is created. Notwithstanding such requirements, however, if one serve as director, and be

generally recognized as such, his acts will bind the corporation, though he do not possess the requisite qualifications. On the other hand, if a director, though qualified, continue to wholly neglect the duties of the office for a long period, he will be presumed to have abandoned it, and his place may be declared vacant by the other directors and another elected in his place.

§ 105. Term of Office.

The period of incumbency of directors is generally fixed by statute or in the by-laws, or both. If, at the end of the term for which they were elected no successors for them should be elected, they would continue to hold office so long as they continued to act; and they would not be mere de facto directors, but would be directors de jure, that is, of legal right. That is what is meant by the provision in statutes and by-laws that directors shall hold office for a given period, and until their successors are duly elected and qualified. Such meaning is often given effect to avoid the trouble and inconvenience of electing directors at the annual meeting. The omission is equivalent to a re-election of the incumbents, except that a special meeting of stockholders may be called for the purpose and may elect a new board. In that case the new board would only serve by virtue of such election until the next annual meeting. If none were then elected, they would hold over with as much right as if they had been elected at an annual meeting.

§ 106. Express Powers of the Board.

The modern tendency is to define and limit the

powers and duties of directors by statute; and statutes are generally found providing for the exercise of the corporate powers and management of the business and property of all corporations by their boards of directors, for the manner of filling vacancies, and the numbers or proportion that shall constitute a quorum. Following general parliamentary usage, it is usually provided that a majority of the whole board shall constitute a quorum. Under such a statute, a number equal to a majority of the whole number provided for in the articles will constitute a quorum, though there be one or more vacancies.[1]

The powers contained in the articles or charter, unless curtailed in the by-laws, must be considered in the light of so many delegations of authority, in the nature of powers of attorney, and the general principles applicable thereto apply here. Where their powers are thus specifically defined, directors cannot claim in respect to them the liberal common law powers of directors, nor can they, when they are thus limited, ,enact any by-laws enlarging their authority. But in all matters concerning which their authority is not so circumscribed, they may exercise all the powers of the corporation, by virtue of its constating or incorporating instruments, and, in addition thereto, those implied from the nature of the duties devolving upon them.

The directors, when assembled as a board, are, next to the stockholders, in meeting assembled, the agency of highest authority in the corporation, but only when acting together as a board. Under their expressly delegated authority, they may do whatever a liberal

construction of the terms of the instruments conferring it allow. Such instruments are liberally construed in favor of upholding the acts of the directors to the fullest extent consistent with the best interests of the corporation.

Where, either by express terms of statutes, or by the common law, in the absence of a statute on the subject, the general powers of a corporation are conferred upon the directors, they may, unless restricted, do whatever the corporation itself might do. But unless expressly authorized by law to do so, they would have no right, even under such general authority, to dispose of the corporate franchises.

Under the usual statutory provisions, and when the stockholders are not assembled, directly controlling the corporation, the directors practically are the corporation, so that what they do as its representatives the corporation is itself deemed to do.

Limitations upon the powers of directors are usually designed for the protection of stockholders, as well as the public, and are directed against the declaration and payment of dividends when the financial condition of the corporation does not justify it, the contracting of excessive indebtedness, making false reports, etc.

§ 107. Increasing and Decreasing Membership of the Board.

Statutes are usually found authorizing an increase or decrease in the membership of the Board of Directors. Action by the stockholders is usually required

for that purpose. Such action takes the form of a resolution, and may be as follows:

Form 91.

.....

Be it resolved tht the number of Directors of this corporation, the New Era Printing Company, be and the same is hereby increased from the original number of seven to nine; that the present Board of Directors be and they are hereby authorized and directed to appoint or elect two additional members of said Board, in accordance with this resolution, to serve until the next annual election, and to take all such steps as shall be necessary to give legal effect to this resolution, in conformity with the requirements of the statutes governing the subject.

.....

Such statutes require certified copies of the proceedings of both the stockholders and the Board to be filed with the proper county officer having custody of the original articles.

The same result may be accomplished by an amendment of the articles; as to which see Chapter 18.

§ 108. Compensation of Directors.

As a rule, intended for the protection of stockholders, and founded upon the policy of preventing fraud, directors are not entitled to compensation for the performance of their duties as such.

But the rule does not apply where a director performs onerous and necessary services, not necessarily incidental to his relation of directorship; and in such case the law implies an agreement on the part of the corporation to pay what the services are reasonably worth.[2]

In order, however, to hold the corporation liable

for services so rendered, it must appear that the services were valuable, as well as that they were rendered under such circumstances as to raise the presumption that the parties intended and understood that they were to be paid for, or at least that the circumstances were such that a reasonable man, in the same situation with the party who receives aid is benefitted by them, would and ought to understand that compensation was to be paid for them.[3]

So, where services are to be performed which may as well be performed by a mere servant or agent as by a director, the Board may certainly employ one of its members and pay him just and reasonable compensation, regardless of his selection.[4]

It is obvious also that the rule against compensating directors, as such, does not apply where a director is employed as President, Secretary, Manager, or any other officer, and as such has independent and separate duties to perform.

§ 109. Fiduciary Relation of Director.

The law does not permit of a director voting to make a contract, or to ratify a transaction in which he has, or had, a separate individual interest. And where a quorum is not present at a meeting where such business is to be acted upon, except by counting the directors so interested, no legal quorum is present.[5]

And it is immaterial whether the interested director does or does not vote for the resolution authorizing such action.[6]

Nor does the fact that a contract made by directors, in which they are personally interested was

open and that the profit to be derived therefrom was not secret, render the contract valid. The publicity alone of an illegal and unauthorized act of directors of a corporation does not make it legal or valid.[1]

§ 110. Filling Vacancies.

When a vacancy occurs in the Board of Directors, the remaining members are almost universally given power, by statute or in the by-laws, or both, to fill such vacancy. And when a member of the Board ceases to be a stockholder, in the case of a business company, or ceases to become a member in a corporation not organized for profit, his place may be declared vacant by the remaining members, for the purpose of filling the vacancy.

This may be done by resolution in the following form :

Form 92.

.....

Whereas, Enos Hopkins is disqualified as a Director of this corporation by reason of his ceasing to be a holder of the shares of its capital stock, (or ceasing to be a member), be it resolved that the office of the said Enos Hopkins as such Director, be, and the same is, hereby declared to be vacant, and William Benson, a holder of forty shares of the capital stock (or a member) of this corporation, is hereby appointed a Director to fill the vacancy caused by the disqualification of said Hopkins and the vacancy hereby declared.

.....

§ 111. Selection of Place for Deposit of Corporate Funds.

When a banking company has not been elected Treasurer of the corporation, as may be, and often is,

the case, the Board of Directors may select a bank for keeping the account of the corporation, or may leave its selection to the Treasurer.

A resolution selecting a bank and directing the opening of an account with it may be as follows :

Form 93.

.....

Be it resolved that this corporation, the New Era Printing Company, open an account with the Safe Security Bank, doing business at No..... Pennsylvania Avenue, Washington, D. C., and that all funds of this Company be deposited therein, such account to be in the name of this corporation; that such funds so deposited be withdrawn only by check signed by the Treasurer and countersigned by the President; that the Treasurer be and he is hereby authorized and directed to carry this resolution into effect, and to deposit in said bank all funds now in his hands, or that may hereafter come into his hands as Treasurer of this corporation.

.....

§ 112. Appointment of Officers and Agent.

A general manager is often elected as one of the officers of a corporation, or any officer may be ex-officio general manager under the provisions of the by-laws. The Directors may, however, at any time appoint one of their number or some other person as general manager. The resolution of appointment may be as follows :

Form 94.

.....

Be it resolved by the Board of Directors of the New Era Printing Company, that John Gordon be, and he is hereby, appointed General Manager of this Company, with power to generally supervise and direct its business, and such other

powers as said Board may from time to time confer upon him, that his salary be and and is hereby fixed at two hundred dollars ($200) per month, beginning immediately, and payable at the end of each month of actual service, as other salaries are now paid.

.....

A form of appointment of a special agent to represent the corporation in a single transaction, or to make a particular contract, may be as follows :

Form 95.

.....

Be it resolved, by the Board of Directors of the New Era Printing Company, a corporation, that John Gordon be and he is hereby specially appointed and authorized, in the name, and on behalf of this Company, to enter into a contract with the Universal Manufacturing Company of Philadelphia for the construction of a Printing Press specially designed for the uses of this Company, the price and terms of payment therefor to be in accordance with the written proposition submitted by the said Universal Manufacturing Company.

.....

§ 113. Power of Directors to Change the Place of Business.

It is usually discretionary with the corporate management to establish the place, or places, of business wherever they see fit, in the town or city designated in the articles as the location of the principal place of business. But the removal of the principal offices from one town to another requires action by the stockholders, as well as by the directors. The required proportion of the stockholders may consent in writing, or they may meet and pass a resolution. The form is immaterial, so that their consent is clearly made to appear. They may specify the place to which the

office is to be removed, or they may merely consent to a removal generally, leaving it to the Board to select a place. The resolution by the Board may be as follows :

Form 96.

.....

Whereas, the consent of two-thirds of all the stockholders of the New Era Printing Company has been obtained and filed in the office of said corporation, to the removal of its principal place of business from the City of Washington, in the District of Columbia, to the City of Georgetown, in said District ;

Therefore, be it resolved, that such principal place of business be, and the same is hereby removed accordingly, such removal to take effect from and after the first day of May, 1904, and that the Secretary be, and he is, hereby authorized and directed to advertise such removal once per week for four successive weeks, as required by law, in a newspaper of general circulation to be selected by him.

.....

§ 114. Special Meetings of the Board.

It is sometimes as important that a special meeting of the directors be held as that the stockholders be specially assembled. Indeed, the Board of Directors, as a rule, have ample power to do all that could be done at a special meeting of the stockholders, and there is a great advantage in calling that body together rather than the stockholders.

It is usually provided in the by-laws, and sometimes by statute, that a minority of the Board may call a special meeting. In such case the call would be directed to the President, and would be in substantially the same form as the request by stockholders.

(See Form 34.) Upon receiving it, the President's call would be as follows :

Form 97.

Office of

NEW ERA PRINTING COMPANY,

To J. F. Weston, Secretary :

Pursuant to authority vested in me, and at the request of two members of the Board of Directors, I hereby call a Special Meeting of the Board of Directors, to be held at the office of said corporation, No. 50 Printing House Square, Washington, D. C., on the 15th day of May, 1904, at 10 o'clock A. M., for the purpose of considering and acting upon a proposition to move the plant of said Company to a new site and to transact all such business as properly pertains to and is connected with such removal ; and I hereby authorize and direct you to send out notices of said meeting to the Directors of said corporation, in accordance with the requirements of the By-Laws.

JAMES WILLARD,

Dated May 4, 1904. President.

The acts of a mere quorum of the directors present at a special meeting, of which no notice was given to the absentees, are not valid as corporate acts.[8]

§ 115. Resignations and Action Thereon by the Board.

A resignation takes effect according to the intention of the officer or director tendering it. If it is the desire of the party to be immediately relieved of the official relation, he should not rest with merely tendering his resignation and requesting its acceptance. Such resignation does not take effect until, nor unless, accepted. To be at once relieved, he should give unequivocal notice of his resignation, using the words, "I hereby resign," or equivalent words.

A mere tender, with a request for acceptance, holds good until withdrawn, or until accepted, and may be accepted at any time during the term of office for which he was elected or appointed ; but if the director or officer tendering it be re-elected, it would have to be renewed for the purposes of acceptance.

In case of a peremptory, unconditional resignation, no action by the body to which it is sent is required to make it effective. That form should be adopted where an officer or director desires to escape responsibility for some action about to be taken.

If a resignation specify that it is to take effect at a future date, it cannot be made effective at any earlier date by acceptance, but may be accepted in advance of such a date.

Resignations are often addressed to the Secretary, to be delivered to the Board. If delivered to the Board, the same end is accomplished as if addressed to the Board; but the Secretary is under no legal obligation to deliver a resignation so addressed. The better form and the safer course is to address the resignation to the Board, and address the envelope in which it is placed to the Board, in care of the Secretary.

A tender of the resignation is sometimes resorted to in private corporations to ascertain the pleasure of the Board as to whether existing official relations should continue. Such method cannot be commended. If an officer believes he is performing his duty, he has no right to consult the pleasure of his fellow officers or directors, but rather the interests of the stockholders.

The desire or intention to resign as a director, or

as an officer, is so easily expressed that a form for it appears to be almost superfluous. If, however, there be, as is sometimes the case, a reason for terminating the relation immediately, or at any particular date, the resignation should be so worded as to accomplish that object.

The form for resignations which follows, it is thought, will cover nearly or quite all conditions :

Form 98.

To the Board of Directors of the
NEW ERA PRINTING COMPANY,

I hereby transmit my resignation as a member of the Board, to take effect immediately.

Washington, D. C., May 1, 1904.

Respectfully,

E. P. JONES.

Form 99.

To the Board of Directors of the
NEW ERA PRINTING COMPANY,

Gentlemen : Having been temporarily elected a member of the Board pending the selecting of a suitable person to permanently fill the place made vacant by the resignation of E. P. Jones, I hereby tender my resignation as a member of your body, to take effect upon your acceptance of the same.

Respectfully,

JOHN GORDON.

Form 100.

To the Board of Directors of the
NEW ERA PRINTING COMPANY,

Gentlemen : I hereby tender my resignation from the Board of Directors of said corporation as a member thereof,

to take effect at the close of the next regular meeting, to be held on the 15th day of May, 1904. E. P. JONES.

This April 30, 1904.

Form 101.

To the Board of Directors of the
NEW ERA PRINTING COMPANY.

Gentlemen: I hereby tender my resignation as President of your Company and as a member of the Board of Directors, and ask its consideration and acceptance at the next meeting of the Board. Respectfully,

M. L. BENNETT.

Washington, D. C., May 1, 1904.

§ 116. Removal of Directors.

Statutes are found in some of the States providing for the removal of directors. The power thus given extends to the removal of one director or of the whole Board. Such removal can only be accomplshed by the vote of a certain proportion of the stockholders, usually two-thirds, at a meeting of which a notice must be given specifying such to be the purpose, or one of the purposes. The statutes seem to leave the question, of course, entirely to the discretion of the stockholders. It is thought, however, that the courts would protect by injunction an arbitrary removal without cause, especially if its purpose were to install agents and tools of the majority for the purpose of perpetrating a fraud upon a protesting minority. The resolution of removal may read as follows:

Form 102.

Whereas, John Doe, one of the Directors of this corporation, has been, on various occasions, direlict in his duties as

such Director, and has used his position for the promotior of his own personal gain, at the expense of the interests of said corporation and its stockholders;

Now, therefore, be it resolved by the stockholders, two-thirds voting therefor, that the said John Doe be, and he is hereby, removed from the office of Director, and the remaining members of the Board of Directors are authorized and requested to fill the vacancy caused by his removal, pursuant to the provisions of the statutes and By-Laws in such case made and provided.

.....

§ 117. Notices of Meetings of the Board.

The following are appropriate forms for giving notices respectively of regular and special meetings of the Board of Directors:

Form 103.

.....

Office of
NEW ERA PRINTING COMPANY.
50 Printing House Square,
Washington, D. C. May 20, 1904.

To E. P. Jones, Director:

You will please take notice that the Regular Monthly Meeting of the Board of Directors of the New Era Printing Company will be held at the office of said corporation, No. 50 Printing House Square, in the City of Washington, D. C., on the 25th day of May, 1904, at 10 o'clock A. M.

Respectfully,
J. F. WESTON, Secretary.

.....

Form 104.

.....

Office of
NEW ERA PRINTING COMPANY.
50 Printing House Square,
Washington, D. C. May 20, 1904.

To E. P. Jones, Esq., Director:

You will please take notice that, pursuant to a call by the

President, a Special Meeting of the Board of Directors of the New Era Printing Company will be held at the office of said corporation, No. 50 Printing House Square, in the City of Washington, D. C., on the 25th day of May. 1904, for the purpose of considering and acting upon a proposition to move the plant of said company to a new site and to transact all such other business as properly pertains to and is connected with such removal.

Respectfully,

J. F. WESTON,
Secretary.

.....

It will be remembered that no notice of a regular meeting is required, unless some unusual business is to be transacted, but is usually given as a reminder.

In the absence of any statute or by-law fixing the length of time that notice must be given before a special meeting of directors, twenty-four hours will be sufficient.[9]

§ 118. Call and Waiver in Lieu of Notice.

After the election of directors, if they are present at the meeting at which they are elected, and all attend a meeting held immediately, or soon thereafter an organization of the Board may be effected thereat, but there might be a question whether any other business could be legally transacted without the express consent of all. Therefore, if matters require to be immediately acted upon by the Board at that first, or at any other special meeting, the directors should sign and deliver to the Secretary a call and waiver, which may be as follows :

Form 105.

The New Era Printing Company.

CALL AND WAIVER OF NOTICE.

The undersigned, being all the Directors of the New Era Printing Company, hereby call a meeting of the Directors of said corporation, to be held at Room No. 15, No. 50 Printing House Square, City of Washington, D. C., on the 2nd day of March, 1904, at 10 o'clock A. M., for the purpose of electing officers of said corporation, acting upon a proposition to buy a new site for its business and doing any and all other things required to start said corporation in the business for which it was incorporated and organized; and we waive all statutory requirements, and those of the By-Laws, as well as to notice, time and place and statement of the purposes of said meeting, and consent to the transaction thereat of any business pertaining to said corporation and its legitimate purposes that may be proposed or brought before it at said meeting.

E. P. JONES,
M. L. BENNETT,
ASA ROBERTS,
JAMES WILLARD,
ROBT. AINSLIE,

Dated March 1, 1904. Directors.

As stated previously, all the members of any body of individuals may meet and, by unanimous consent, obviate the necessity of any previous call or waiver. But, in such case, it is proper—though perhaps not necessary—that express consent to all that is done at such meeting be either signed and filed with the Secretary, or entered upon the minutes. Whichever course

be pursued, the last form given above may be used, with slight modification. If the form of a minute entry be preferred, the Secretary will simply make the form speak in the third instead of the first person, and omit the signatures.

§ 119. Personal Liability of Directors.

In some of the States are found constitutional provisions that the directors or trustees of corporations and joint stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint stock association during the term of office of such director or trustee. It appears to be now well settled law :

(1) That such provisons are self-executing; that is, that an action is maintainable to enforce the liability without action by legislators;

(2) That directors taking office where such a provision exists, assume the relation of sureties, to the same extent as if they should sign a bond, agreeing to answer for the honesty of the corporate officers;

(3) That the proper remedy to enforce the liability is by bill in equity, making all the corporate creditors, as well as the directors sought to be charged, parties ;

(4) That the right of action to enforce the liability follows the debt against the corporation, and therefore, is maintainable by an assignee of a creditor ;

(5) That the creditor's claim need not be reduced to judgment before suing ;

(6) That the action may be maintained by a creditor who becomes such after the occurrence of the misappropriation or embezzlement.[10]

The provision is not to be construed to warrant recovery from directors for losses resulting from mere acts of negligence, or imprudence in the investment of corporate funds, either of themselves or of officers of the corporation.

The misappropriations meant are such as resemble embezzlements, such as misappropriation of funds intrusted to an officer for a special purpose, by devoting them to some unauthorized purpose.[11]

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[1] Matter of Union Ins. Co., 22 Wend. (N. Y.) 599; Wright v. Commonwealth, 109 Pa. St. 560; Porter v. Lassen, etc., Co., 127 Cal. 261.

[2] Rogers v. Hastings, etc., 22 Minn. 25; Bassett v. Fairchild, 132 Cal. 637; Sawyer v. Pawners' Bank, 6 Allen (Mass.) 209.

[3] Pew v. First Nat. Bank, 130 Mass. 391, 395; Fitzgerald, etc., Const. Co. v. Fitzgerald, 137 U. S. 98.

[4] Henry v. Rutland, etc., Ry. Co., 27 Vt. 435; Pew v. First Nat. Bank, 130 Mass. 381; Chandler v. Monmouth Bank, 13 N. J. L. 255; Shackelford v. New Orleans, etc., R. R. Co., 37 Miss. 202; Santa Clara Mining Assn. v. Meredith, 49 Md. 389; Cheeney v. Lafayette, etc., Ry. Co., 68 Ill. 570; First Nat. Bank v. Drake, 29 Kan. 311; Stevenson v. Bo-Metallic, etc., Co., 18 Mont. 13; Felton v. West Iron Mountain Min. Co. 16 Mont. 81.

[5] Bassett v. Fairchild, 132 Cal. 637; Curtin v. Salmon River, etc., Ditch Co., 130 Cal. 345.

[6] Curtin v. Salmon River, etc., Ditch Co., 130 Cal. 345.

[7] Gadell v. Verdugo, etc., Co., 138 Cal. 308.

[8] Curtin v. Salmon River, etc., Ditch Co., 130 Cal. 345; Reilley v. Campbell, 134 Cal. 175.

[9] Balfour-Guthrie Ins. Co. v. Woodworth, 124 Cal. 169.

[10] Winchester v. Howard, 136 Cal. 432.

[11] Fox. v. Hall & N. Co., 108 Cal. 369; Winchester v. Howard v. 136 Cal. 432; Thompson v. Greeley, 107 Mo. 577; Buell v. Warner, 33 Vt. 570; Dodd v. Wilkinson, 42 N. J. Eq. 647.

CHAPTER XIII.

Officers and Agents.

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130. Committees as Collective Agencies.
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§ 120. Generally as to the Exercise of Corporate Powers Through Agents.

In the dealings of corporations, the law of agency is as applicable as in the case of dealings with individuals. The result of judicial decisions is that for acts done by the agents of a corporation, either in contractu or in delicto, in the due course of business, and of employment, the corporation is responsible, as an individual would be under similar circumstances.[1]

The rule is that corporations, like natural persons, are bound, and bound only, by the acts and contracts of their agents, done and made within the scope of the latter's authority.[12]

From the foregoing, it is apparent that the question whether an agent in fact had authority to make the contract or do the act does not always arise; that is to say, that fact is sometimes immaterial, when the validity or invalidity of a transaction in the name of a corporation is put in issue.

If the corporation has clothed an agent with power to do an act upon the existence of some extrinsic fact necessarily and peculiarly within the knowledge of the agent, and the existence of which the act of executing the power is itself a representation, a third person dealing with such agent in entire good faith, pursuant to the apparent power, may rely upon the representation, and the corporation is estopped from denying its truth to his prejudice.[3] On the other hand, a party dealing with an agent is not entitled to assume the existence of any unusual state of facts in order to bring the act of the agent within the scope of his ostensible powers. For instance, the cashier of a bank is not, by reason of his official position, presumed to have the power to bind it as an accommodation endorser on his individual note; and a payee who fails to prove that the cashier, as such, had authority to make the indorsement cannot recover against the bank.[4] In such cases the very character of the transaction is sufficient to put the party accepting the indorsement upon inquiry as to the authority of the agent. It would be otherwise, however, if such an agent had authority to "issue" or indorse negotiable paper on behalf of the company, in ordinary business transactions. Where that is the case,

a bona fide purchaser of negotiable paper issued or indorsed by an agent possessing such general authority will be protected.[5]

§ 121. The Charter or Articles as a Measure of Authority—Herein of the Doctrine of Estoppel.

The charter, or, where the corporation is formed under general laws, the articles, fix the extreme boundaries of authority for all corporate agents. No act, violative of the terms of these, or outside the purposes of forming the corporation, as set forth therein, binds the corporation of its own force and effect.[6] But upon this rule has been grafted the equitable doctrine of estoppel, according to which, if the corporation has received and enjoyed the benefit of an act or contract performed on its behalf, it will be estopped, when liability is sought to be fixed upon it, on account of the act or contract, from setting up the defense that the transaction was beyond the corp rate powers.

But to make this equitable principle applicable, the conduct of the governing body of the corporation, with respect to the ultra vires act, must be such that a ratification may reasonably be inferred from it. A further distinction is made by the authorities between acts which are beyond the power of the corporation under any and all circumstances and those which, under some circumstances the governing body would, either directly or through an agent, have power to perform. As to the former, there can be no ratification, even though the entire membership, in meeting assembled, should vote therefor; while as to the

latter, those conditions, the compliance with which would have conferred authority upon the agent who has done the act in question, may be waived by the corporation, and will be treated as waived if the corporation has accepted the benefits of full performance by the other party. In such cases waiver or ratification may even be implied from mere acquiescence or neglect of all the stockholders to object or take any action looking to a prevention of the ultra vires act.[7]

The above principle is well illustrated in cases of an unauthorized issue of preferred stock where, under certain conditions and upon the observance of certain formalities, the issue would be legal, and the stockholders have remained silent and neglected, to either prevent its issue or to have the irregularity corrected.[8]

And the corporation and its stockholders are, upon the same principle, bound by a transfer of all its property, in settlement of a judgment against the company, all the stockholders consenting.[9] The principle has been often applied for the protection of outside parties dealing with corporations, on the assumption that preliminary acts, necessary to give validity to contracts, were duly attended to, or that precedent procedure was adopted as required by law, or the constating instruments.[10]

Frequent applications of this principle are met with where property has been purchased for a corporation which it might require in carrying out its chartered purposes, or might be purchasing for some ulterior purpose, according to circumstances. If there is nothing, in any particular case to show the party

selling the property, that it is not wanted for the legitimate purposes of the corporation, the officers of the latter will not be permitted to defend on the ground that the contract was invalid as being beyond their powers.[11]

So, where an agent of a corporation has been given authority to borrow money and issue the obligations of the corporation therefor, to only a limited amount, and he borrows money and issues his principal's notes in excess of the authorized amount. in an ordinary business transaction, to a party acting without notice of the fact that the agent has exhausted his authority, the corporation will be bound by his act.[12]

§ 122. Secret Instructions and Undisclosed By-Law Limitations.

It is apparent, from what has preceded, and is well settled judicially, that persons dealing with an agent within the scope of his ostensible authority, are not bound by secret and undisclosed instructions limiting his ostensible powers.[13] The same is true as to restrictions contained in by-laws of which third parties, dealing with the corporation, through an agent, have no notice. As a rule, outside parties are not charged with notice of what the by-laws contain. They may assume that an agent belonging to a particular class possesses the powers usually belonging to agents of that class, notwithstanding any by-law restrictions upon the authority of the particular agent of which they have notice.[14]

For instance, since the officers of a banking company

are held out to the public as having authority to act according to the general usage and practice of banks and course of their business, the acts of such agents, within the scope of such usage, practice and course of business, would, in general, bind the bank in favor of third parties possessing no other knowledge.[15]

In general, where an agent undertakes to perform acts not pertaining to the powers of the class to which he belongs, he must, in order to bind the corporation, be given special authority; and as to such acts, parties dealing with him may assume nothing as to his authority.[16]

§ 123. Express Ratification of Unauthorized Acts of Agents.

Any act of a corporate officer or agent, though done without authority, may be, if within the powers, or in keeping with the purposes of the corporation, ratified by its Board of Directors.

The following is a general form of ratification :

.....

Form 106.

.....

RATIFYING ACT OF VICE-PRESIDENT.

Be it resolved by the Board of Directors of the New Era Printing Company, in regular meeting assembled, (or at a special meeting called for that expressed purpose), that the act of John Gordon, its Vice-President, in exchanging its former plant for one comprising modern machinery and appliances, and in paying $3,000 of the funds of this corporation for the difference, be and the same is hereby ratified, approved and confirmed as the act of this corporation.

.....

Form 107.

.....

RATIFYING ACT OF SECRETARY.

Whereas, on or about the 1st day of March, 1904, the Secretary, in the name of this Company, borrowed one thousand dollars ($1,000) from the Safe Security Bank for the uses of this corporation;

And Whereas, at that time the only officer or agent having authority to so borrow money was the President; and whereas, said action by the Secretary was taken in the absence of the President from the city of Washington, the money so borrowed being urgently needed for the purposes of this Company;

Now, therefore, resolved, that said act of the Secretary of this Company be and the same is hereby ratified, approved and confirmed, and said note given to said Bank admitted to be the duly executed and delivered note of this corporation, and as of the same force and effect as if executed and delivered by the Secretary under direct authority of, and instruction from this Board.

.....

§ 124. Powers and Duties of Corporate Officers—President.

Much is stated in various other connections as to the duties and rights of the President's general relation to and control of the corporate autonomy. It only remains to consider his proper province and some of his power and duties, as such, in the prosecution of its business, as an agent of the corporation, outside his function as a presiding officer at meetings of the stockholders and of the Board of Directors. Each particular act of the President of a private corporation, acting as such, may be tested by either one or another of three inquiries. First, Was it an act usually

performed by presidents of that class of corporations to which the one of which he is such officer, belongs? Second, Has he, or other presidents of that particular corporation been in the habit of transacting that business, with the knowledge and consent, or acquiescence, of its Board of Directors? Third, Was the act within the express powers conferred upon him by the Board of Directors, or incidental to those so conferred? If an affirmative answer can be given to either of these questions with respect to the act in question, then the corporation is bound by it, unless the act be outside the express powers given him, and it be shown that the party claiming by virtue of the act had notice that, in the particular instance, the power had been conferred upon another agent, or expressly withheld from the President.

In the absence of express authority from the Board, the powers of the President depend largely upon the nature of the company's business. When a contract is made, in the name of the corporation by the President in the usual course of its business, which the Board of Directors have the power to authorize him to make, or to ratify after it is made, the contract is, though not strictly within the line of his ordinary duties, presumptively that of the corporation. This presumption will prevail until it be shown that such act was not authorized or ratified. And one dealing with the President of a corporation, in the usual course of business, and within the powers which the President has been accustomed to exercise without objection from the Directors, has the right to as-

sume that the President has been invested with those powers.[17]

The foregoing tests were applied and the authority of the President upheld, where he had offered a reward for information leading to the arrest of the absconding teller of a bank.[18]; also where the President had assigned a judgment recovered by the bank to a trustee for collection.[19] And when the Directors, under legal authority, have resolved that an assignment for the benefit of creditors shall be executed to a trustee to be named by the President, he, in naming such trustee and making the assignment, exercises the power of the Board, as he may legally do when so authorized.[20].

Where the Board has failed or neglected to employ assistance reasonably necessary for carrying on the usual business of the corporation, or when exigencies arise requiring professional or skilled service, the President may, in the absence of any higher authority, and of any different inconsistent provision in the by-laws, procure the necessary assistance or engage the necessary special service. Under such circumstances, a President's contracts of employment of an engineer and bookkeeper for a railway company for a term of one year were upheld.[21] The same conclusion was reached where a President had employed an attorney to represent the corporation, the exigencies of the situation seeming to require it.[22] So, a corporation may be bound by contracts made by its President, or other chief officer, without express authority, by reason of a course of dealing on his part recognized by its Board of Directors, or their

acquiescence in prior acts by him of the same character, from which authority, in the particular instance, is fairly inferable; provided, always, that his acts be within the powers of the corporation.[23] The authority of Directors to delegate authority to the President has been frequently recognized by the courts.[24] And even without a resolution or other express authority from the Board of Directors, if they permit the President to exercise all the powers of the corporation for any considerable length of time, any act of his inside the powers of the corporation will bind it. Under such circumstances his authority is supported by presumption of express authority.[25]

§ 125. Powers of President, Who Is Also General Manager.

In some corporations it is found convenient and economical to turn over the entire control and management of the business which it was created to do to its President. In others the President owns practically all, or at least a controlling percentage of the stock, and by means thereof, constitutes himself the General Manager.

In either case, upon the adoption of a resolution to that effect, the President becomes clothed with practically all the powers of the Board of Directors ; or, it may be just as proper to say, he may then exercise all the powers of the corporation, being limited with respect to his powers only by the provisions of the charter, or general law, and by-laws.[26]

§ 126. Powers and Duties of Officers—Secretary.

Little need be added to what has been stated in other connections with reference to the numerous and important duties of the Secretary. A certain latitude of implied authority is incident to his office; and yet he cannot exercise by implication any of those large discretionary powers which appertain to the Board of Directors and to such offices as President and General Manager. The Secretary of a corporation has no power to release or transfer its property, in the absence of authority, express or implied, and with no authorization or ratification by its Board of Directors.[27]

The Secretary may, however, be vested by resolution of the Board of Directors, or by their acquiescence with knowledge in a course of dealing—equivalent to a resolution—with all the authority of manager. In such case, his power is as extensive as that of president acting as general manager, discussed in the last preceding section. But this power is referable to his managerial relation purely, deriving no aid from the fact that he is also Secretary.

The duties of Secretary, however important, are purely ministerial. This, however, is but a technical distinction, since the Secretary, when clothed by the Directors with the functions of general manager, possesses contracting powers co-extensive with the business purposes of the corporation.[28]

Among the important duties of the Secretary may be mentioned those pertaining to the keeping of the minutes, and furnishing certified copies of their con-

tents, as well as of the contents of other corporate records.

A knowledge of the exact form of an entry of minutes, as well as satisfactory evidence that such entries exist, is often desired. The minute book itself is, of course, the best evidence, and, in judicial proceedings, must be produced, if insisted upon. But in the transaction of ordinary business, a copy of the particular entry or entries will be sufficient; and, often, by agreement of counsel, certified copies are received in order to avoid the inconvenience and expense of bringing the Secretary and his minute book into court.

Certified copies of by-law provisions and resolutions may be required and furnished in the same way. If only one part of the minutes of a particular meeting is called for, there should be at least enough else to show that the minutes of which it purports to form a part are those of a meeting properly held. The following forms of certified minutes, resolution and by-law provision are self explanatory:

Form 108.

.....

Certified copy of Extract from the Minutes of the Annual Stockholders' Meeting of the New Era Printing Company.

Held March 1, 1904.

(Here insert the portion of the minutes showing that the meeting was properly organized, and that proper notice was given, (see Form 117), and follow it with the record of the particular transaction in question.)

I hereby certify that I am the duly elected, qualified and acting Secretary of the New Era Printing Company; that the above is a true and correct copy from the minutes of the

proceedings held at the Annual Stockholders' Meeting of said corporation, held in the office of the Company on the 1st day of March, 1904, at 10 o'clock A. M.

In Witness Whereof, I have hereunto affixed my signature and the seal of said corporation, at the City of Washington, D. C., on this the 6th day of March, 1904.

(Corporate Seal.) J. F. WESTON,
Secretary.

Form 109.

Certified copy of a Resolution adopted at the Annual Meeting of the Stockholders of the New Era Printing Company, a corporation, on the 1st day of March, 1904.

(Here insert the resolution.)

I hereby certify that I am the duly elected, qualified and acting Secretary of the above named corporation; and that the above is a true and correct copy of a resolution adopted at the Anual Meeting of the Stockholders of said Company, held on the 1st day of March, 1904, at 10 o'clock A. M., in the office of said Company at No. 50 Printing House Square, City of Washington, D. C.

In Witness Whereof, I have hereunto signed my name and affixed the seal of said corporation at Washington, D. C., this March 10th, 1904. J. F. WESTON,

(Corporate Seal.) Secretary.

Form 110.

Certified copy of By-Laws of the New Era Printing Company:

Article .....
Proxies.

Section .....

(Here insert the Section governing proxy voting and the certificate adapted from the foregoing forms.)

Sometimes the Secretary's affidavit to the correctness of the copy will be required, and may be as folows :

Form 111.

.....

District of Columbia, } ss
City of Washington. }

On this the 10th day of March, 1904, before me personally came J. F. Weston, and being by me first duly sworn, deposes and says : That he is the duly elected, qualified and acting Secretary of the New Era Printing Company ; that he attended and acted as Secretary at the meeting of the stockholders of said corporation held in the office of said Company on the 1st day of March, 1904 ; that he correctly recorded the proceedings of said meeting in the minute book of said corporation, and that the above and foregoing is a true and correct copy taken from the minutes so recorded.

J. F. WESTON,
Secretary.

Subscribed and sworn to before me, this the 10th day of March, 1904.

NEWTON WISHART,
(Notarial Seal,) Notary Public within and for the District of Columbia.

.....

§ 127. Powers and Duties of Officers—Treasurer.

The Treasurer of a private corporation performs duties which are in their nature purely ministerial, although undoubtedly occasions may sometimes present themselves upon which he is called upon to exercise a sound discretion. He usually confines his attention to signing checks, receiving and attending to the safekeeping of the funds. His duties may be enlarged by the provisions of the by-laws, and he may

be entrusted with other duties, such as countersigning stock certificates, keeping the ordinary books of account, making collections, etc. But even when that is the case, these duties are performed by him, not as any part of his duty as Treasurer, but as any other agent specially employed for the purpose would perform them, and other principles than those governing the office of Treasurer are applicable.

§ 128. Powers and Duties of Officers—General Manager.

Whether the President or the Secretary be also General Manager, or the office of General Manager beconstituted separately, the authority and responsibilities appertaining to the office are the same. Whatever officer be clothed with the general management of the business of a corporation, he has the power to make such contracts and to transact such business as pertains to the management of the business of that class of corporations; and those dealing with it through such representatives, have legal justification for assuming that they possess adequate powers within that limit, in the absence of notice to the contrary, or of circumstances which should lead a prudent person to inquire as to the real extent of their authority.[29]

A General Manager, having the exclusive management and conduct of a manufacturing and commercial enterprise, and, admittedly, the power to purchase stock, contract debts, and discount notes, may, when there is occasion for so doing, borow money to pay debts and purchase goods, and give the corporation's negotiable note therefor.

Nor does the authority of such a manager to borrow money have to be shown by an express order or resolution of the stockholders or Board of Directors. It may be implied, from the general powers of such a manager and the necessities and usages of the business.[30]

§ 129. Powers and Duties of Officers—President and Secretary Acting Conjointly.

Neither the authority of the President nor that of the Secretary is increased by the fact that they act conjointly. But the fact that certain corporations' actions are, according to the usages of business, authenticated by the signatures of the President and Secretary, as corporate officers, warrants a presumption, in an instance of their acting together, that they were duly authorized by their principal, the corporation.

Thus, since the President and Secretary, acting together, usually execute in its name deeds, mortgages, and all formal contracts which it has power to make, and since the Secretary is the proper custodian of the corporate seal, a contract or other instrument bearing imprint of the seal carries with it a presumption of the signatures of the President and Secretary and the precedent authority. One who takes such a contract, or other instrument, so executed, unless he have knowledge to the contrary, will be protected from loss on account of a lack of authority on the part of these corporate officers, provided the circumstances be not such as should arouse suspicion and excite inquiry in the mind of of an ordinarily prudent individual.[31] But if

the President and Secretary should attempt to convey away property essential to the continuance of business, that fact should, of itself, be deemed sufficient to arouse suspicion and induce inquiry.

§ 130. Committees as Collective Agencies.

It is often convenient, and is entirely proper for a Board of Directors to appoint a committee of its members, or designate a standing committee, and authorize such committee to make a conveyance or contract, or attend to any matters of corporate business. Such committee, within the authority thus conferred, possesses all the power of the Board, and it need not report to the Board prior to signing the requisite papers and affixing the corporate seal.[32]

More frequently, however, the President and Secretary are authorized for the same purpose.

§ 131. Resignations of Officers.

Resignations of officers do not, in form, differ materially from resignations of directors, and may be as follows :

Form 112.

.....

To the Board of Directors of the
NEW ERA PRINTING COMPANY.

Gentlemen : I hereby resign as President of your Company, and from its Board of Directors as a member thereof.

M. L. BENNETT.

This May 1st, 1904.

.....

Form 113.

.....

To the Board of Directors of the
NEW ERA PRINTING COMPANY.

Gentlemen: I hereby tender my resignation as Treasurer of your Company, to take effect as soon as my acounts can be examined and audited by the proper committee. I ask for the appointment of a committee for that purpose as soon as convenient. The funds of the Company in my hands will be turned over to the Board, or to my successor, upon demand.

This May 1, 1904.

Respectfully,

A. J. KNOX.

.....

§ 132. Liabilities of Agents Generally.

The true principle governing, with respect to the liability of the corporation for losses resulting to strangers dealing with the corporation from false representations of agents, in matters falling within the general scope of the duties of the latter, is that such losses should fall upon the corporation. The reason underlying this principle is that the corporation, and not the person dealing with the agent, is responsible for the latter's appointment, the former having no means of ascertaining the facts, and being compelled, from the nature of the case, to rely upon the assurances of such agents, or not deal with the corporation at all.[33]

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[1] Philadelphia, etc., R. R. Co. v. Quigley, 21 How. (U. S.) 210.

[2] Chicago, etc., Ry. Co. v. James, 22 Wis. 199.

[3] New York, etc., R. R. Co. v. Schuyler, 34 N. Y. 78; and cases there cited.

[4] West St. L. Sav. Bank v. Shawnee, etc., Bank, 95 U. S. 557.

[5] Monument Nat. Bank v. Globe Works, 101 Mass. 57; Lafayette Bank v. St. Louis, etc., Co., 2 Mo. App. 299; Madison, etc., R. R. Co. v. Norwich Sav. Soc., 24 Ind. 457; Philadelphia, etc., R. R. Co. v. Lewis, 33 Pa. St. 33; Rowland v. Apothecaries' Hall Co., 47 Conn. 384; McIntyre v. Preston, 10 Ill. 48; Mechanics' Banking Co. v. New York, etc., Lead Co., 35 N. Y. 505.

[6] Martin v. Zellerbach, 38 Cal. 300.

[7] Martin v. Pensacola, etc., R. R. Co; Memphis Branch R. R. Co. v. Sullivan, 57 Ga. 240; Bedford R. R. Co. v. Bowser, 48 Pa. St. 29; Danbury ,etc., R. R. Co v. Wilson, 22 Conn. 435; Vermont, etc., R. R. Co. v. Vermont Central R R. Co, 34 Vt. 2; Kennebec, etc., R. R. Co. v. Palmer, 34 Me. 366; Hayworth v. Junction R. R. Co., 13 Ind. 348; Gifford v. New Jersey R. R. Co. 10 N. J. Eq. 176.

[8] See Kent v. Quicksilver Mining Co., 78 N. Y. 159.

[9] Sheldon Hat Blocking Co. v. Eichenmeyer Hat Blocking, Co., 90 N. Y. 607.

[10] See Prince of Wales Life, etc., Co. v. Harding El. & Bl. & El. 183; In re Athenaenum Life Ass. Soc., 4 K. & J. 549; Smith v. Smith, 62 Illl, 493; Galveston v. Cowdrey, 11 Wall (U. S.) 450; Granger v. Original Empire Mill, etc., Co., 59 Cal. 678; Sargent v. Webster, 13 Metc. (Mass.) 497; Bank v. Flour Co., 41 Ohio St. 552; Knox v. Aspinwall, 21 How. (U. S.) 544.

[11] Eastern Counties Ry. Co. v. Hawkes, 5 H. L. Cases 331; Alvord v. Holmes, 10 Abb. N. C. (N. Y.) 96; Yates v. Van De Bogert, 56 N. Y. 526; Steamboat Co. v. McCutcheon, 13 Pa. St. 13.

[12] Ossipee, etc., Mfg. Co. v. Convey, 54 N. H. 295; Auerbach v. Le Sueur Mill Co., 28 Minn. 291; Humphrey v. Patrons' Mercantile Assn., 50 Ia. 607; Nichols v. Mase, 94 N. Y. 160.

[13] Merchants' Bank v. State Bank, 10 Wall (U. S.) 604; Wild v. Bank of Passamaquoddy, 3 Mason (U. S.) 506; Insurance Co. v. McCain, 96 U. S. 84.

[14] See Fay v. Noble, 12 Cush. (Mass.) 1; Kingsley v. New England Mut. Fire Ins. Co. 8 Cush. (Mass.) 393; Smith v. Smith, 62 Ill. 493; Union Mut. Life Ins. Co. v. White, 106 Ill. 67; Mechanics' Bank v. Smith, 19 Johns 115; Lee v. Pittsburgh Coal, etc., Co. 56 How. Pr. (N. Y.) 376.

[15] Minor v. Mechanics' Bank, 1 Pet. (U. S.) 46.

[16] See De Bost v. Albert Palmer Co., 35 Hun. 386; Advance v. Roome, 52 Bash. 399; Rice v. Penninsular Club, 52 Mich. 87.

[17] National Bank v. Vigo County, 141 Ind. 352; Thomas v.

City Nat. Bank, 40 Neb. 501; Bell v. Hanover Nat. Bank, 57 Fed. R. 821.

[18] Bank of Minneapolis v. Griffin, 168 Ill. 314.

[19] Guernsey v. Black Diamond Coal Co. 99 Ia. 471.

[20] Rogers v. Pell. 154 N. Y. 518.

[21] Trawick v. Peoria, etc., R. Co. 68 Ill. App. 156

[22] Boston Tailoring House v. Fisher, 59 Ill. App. 400; Streeter v. Robinson, 102 Cal. 542; Western Bank v. Gilstrap, 45 Mo. 419; American Ins. Co. v. Oakley, 9 Paige 496; Mumford v. Hawkins, 5 Denio 355; Pixley v. Western Pac. R. R. Co. 33 Cal. 183.

[23] Bates v. Coronado Beach Co. 109 Cal. 160.

[24] See Western Bank v. Gilstrap, 45 Mo. 419; Sparks v. Despatch Transfer Co., 104 Mo. 531; Moore v. H. Gans & Sons Mfg. Co., 113 Mo. 106; Hatch v. Coddington, 95 U. S. 48; New York P. & Bk. Co. v. Dixon, 114 N. Y. 85.

[25] See Smith v. Smith, 62 Ill. 493.

[26] Jones v. Williams, 139 Mo. 1; Powers v. Schlict Heat, etc., Co., 23 App. Div. (N. Y.) 380, 48 N. Y. Supp. 237; Senour Manfg. Co. v. Clarke, 96 Wis. 469.

[27] California Winemakers' Corp. v. Sciaroni, 139 Cal. 277.

[28] Merchants', etc., Bank v. Hervey Plow Co., 45 La. Ann. 1214.

[29] Prentice v. United States, etc., Steamship Co., 8 Fed. R. 702; Gane v. Loema Printing Co., 46 Ill. App. 456; Greig v. Riordan, 99 Cal. 316; Rosemond v. Northwestern, etc., Reg. Co., 62 Minn., 374.

[30] Glidden, etc., Co. v. Interstate Nat. Bank, 69 Fed. R. 912; Scofield v. Parlin & O. Co. 10 C. C. A. 83, 61 Fed. R. 807.

[31] Winscott v. Guarantee Ins. Co., 63 Mo. App. 367; Estes v. German Nat. Bank, 62 Ark. 7.

[32] Burrill v. Bank, 2 Metc. (Mass.) 166; Andres v. Fry, 113 Cal. 124; Gashwiler v. Willis, 33 Cal. 20; Abbott v. '76 Land & W. Co., 87 Cal. 323.

[33] Miners' Ditch Co. v. Zellerbach, 37 Cal. 543.

CHAPTER XIV.

Duties of Secretary Pertaining to Meetings.

I. AT MEETINGS OF STOCKHOLDERS.

133. Importance of Secretary's Functions.
134. With Respect to Preparing Order of Business.
135. Lists of Stockholders and Members for Use at Meetings.
136. Outline, or "Cut and Dried," Minutes.
137. Minutes of Other than First Meeting.
138. Oaths and Certificates of Inspectors.

II. AT MEETINGS OF THE BOARD OF DIRECTORS.

139. Order of Business.
140. Forms of Minutes at Various Kinds of Meetings of the Board.

§ 133. Importance of Secretary's Functions.

In various other connections divers duties devolving upon the Secretary have been stated and explained. There are others of special importance which it is proposed to set forth and illustrate under the present head.

In the first place, the most onerous duties and labors pertaining to meetings of stockholders must be performed by the Secretary.

§ 134. With Respect to Preparing Order of Business.

The order of business should be prepared for the use of the presiding officer at meetings, and may be as follows :

Form 114.

.....

1. Calling to order.
2. Calling the roll.
3. Production and proof of notice of the meeting.
4. Reading and disposal of any unapproved minutes.
5. Annual Reports of officers and committees.
6. Election of Directors.
7. Unfinished business.
8. New business.
9. Adjournment.

.....

The above order may be used for a special as well as a regular stockholders' meeting, passing over without action under any heads not mentioned in the call for the meeting.

§ 135. Lists of Stockholders and Members for Use at Meetings.

Even where there are no statutory or by-law provisions requiring it, it is convenient, and nearly indispensable, that the Secretary provide and keep an alphabetical list of the stockholders or members, with their addresses, and in the case of a capital stock corporation, the number of shares held by each of them. In other corporations, the last column in the following form may be omitted :

Form 115.

.....

ALPHABETICAL LIST OF STOCKHOLDERS
of the
The New Era Printing Company.

Name.	Address. P. O.	Shares. No. of
Robert Ainslee	Georgetown, D. C.	100

M. L. Bennett....Georgetown, D. C..... 25
H. L. Brown.....20 Wall St., N. Y..... 65
John Gordon.....Sunrise, Va. 200
E. P. Jones .....Box 900, Washington, D. C..... 10
James Knox.....1800 Vermont Ave., Washington, D. C... 400
Asa Roberts .....800 Capital Ave., Washington, D. C..... 400
J. F. Weston.....Newton, Md. 50
James Willard ....1148 Laurel Ave., Baltimore, Md..... 100

The above list is for ordinary uses—mailing notices, payment of dividends, etc.

For the purposes of a stockholders' meeting the following will suffice:

Form 116.

LIST OF STOCKHOLDERS
of the
The New Era Printing Company.

Name	Shares Owned.	Shares Absent	Present in Person.	Present by Proxy.	
Ainslie, Robt. .	100	100			
Bennett, M. L.	25			25	J. F. Weston
Brown, H. L..	65			65	J. F. Weston
Gordon, John ..	200		200		
Jones, E. P....	10		10		
Knox, James ..	50			50	John Gordon
Roberts, Asa ..	400		400		
Weston, J. F...	50		50		
Willard, James	100		100		
	1.000	100	760	140	

This list should be prepared before the meeting. Only the first column, showing the names of all the stockholders, and the second showing the number of

shares held by each of them can be completed prior to the opening of the meeting, except as to the proxies held by the Secretary himself, and such proxies as may have been previously handed to him. By subtracting the footing of the absent stock (third column) from the total number of shares (second column), it can readily be seen whether a quorum is present and represented.

If the corporation have no capital stock, the second and third columns will be omitted, and check marks will be used in the fourth and fifth to denote the presence of a member, whether in person or by proxy.

§ 136. Outline, or "Cut and Dried" Minutes.

Outline, or "cut and dried," minutes, requiring only the filling of blanks and spaces for the insertion of any unlooked for proceedings, may be purchased from any extensive dealer in legal blanks.

As a rule, the Secretary is almost able to complete the minutes in advance for an annual stockholders' meeting, at which certain matters are always attended to and disposed of in the same way.

By using one of such blanks at a meeting, and indicating by marks the insertion of the details, which are noted as the meeting progresses, on separate sheets of paper, greater accuracy will be secured than by attempting to take the whole down in long hand during the meeting.

Having completed the list, as shown in Forms 115 and 116, and having made the footings, if a stockholder absent when it was made should subsequently arrive, the Secretary may make the appropriate entries in the

columns under the totals, and then make new footings. He should also note such arrival, showing the stage of the proceedings, thus :

"Here Mr. Robt. Ainslie arrived and participated in subsequent proceedings."

In one of the States very strict requirements and regulations are found to govern the method of conducting corporate elections. Inspectors are required to be appointed or elected. The inspectors must take and subscribe a formal oath before entering upon their duties. Then they must certify the result of the election in due form. Some corporations make substantially the same provisions in the by-laws, though the statutes make no such requirements.

The following general form of minutes for the first meeting will usually only require the change of names, dates, etc.; and can be adapted to any conditions or circumstances :

Form 117.

....

Minutes of First Meeting of Stockholders
of the
NEW ERA PRINTING COMPANY.
Held March 1, 1904.

Pursuant to notice (or call and waiver of notice), the stockholders of the New Era Printing Company held their first meeting at Room 15, No. 50 Printing House Square, Washington, D. C., on the 1st day of March, 1904. Present and absent as follows:

(Here insert list as in Form 116.)

Mr. James Willard was chosen to preside, and called the meeting to order, and thereupon, by unanimous consent, J. F. Weston was, by the Chair, appointed Secretary of the meeting.

All the proxies held by persons present were filed with

the Secretary, and were by him examined and found to be in due form and the signatures were found to be genuine.

The Secretary then presented a copy of the notice (or call and waiver), pursuant to which the meeting was held. Said notice (or call and waiver) was ordered to be spread upon the minutes, and is as follows:

(Here insert either the notice or call and waiver, according to the fact.)

A certified copy of the articles of incorporation (or charter) of the Company was presented by the chair, with a statement that all the requirements of law with respect to recording the same and filing a certified copy hade been complied with. It was ordered that said certified copy be entered on the first pages of the minute book, to precede the entry of any minutes.

A draft of a code of By-Laws which had been previously prepared was then submitted to the meeting by the Chair, and after being considered article by article, section by section, and, as a whole, was adopted, (or was amended and adopted) as the By-Laws of the corporation, and ordered to be spread upon the minutes, and entered in a book of By-Laws, to be procured and used by the Secretary for that purpose.

Said By-Laws are as follows: (Here insert them at length.)

The next order of business being the election of a Board of five Directors, the election was proceeded with, a vote by ballot being taken, conducted by H. L. Brown and James Knox, inspectors, which resulted as follows:

E. P. Jones	510 votes.
John Gordon	600 votes.
James Willard	610 votes.
Asa Roberts	700 votes.
M. L. Bennett	535 votes.
H. L. Brown	385 votes.
James Knox	435 votes.
Robt. Ainslie	100 votes.

The chair thereupon declared that E. P. Jones, James Wil-

lard, Asa Roberts, John Gordon and M. L. Bennett had each received a majority of all the votes cast, and were the persons receiving the highest vote and were the duly elected Directors for the next ensuing year.

There being no further business before the meeting, an adjournment was taken sine die.

Attest: JAMES WILLARD,
Chairman.
J. F. WESTON,
Secretary.

.....

§ 137. Minutes of Other Than First Meeting.

There is a general similarity in the forms in which minutes of all stockholders' meetings are made up. Several exemplars follow :

Form 118.

.....

Minutes of Special Meeting of Stockholders
of the
NEW ERA PRINTING COMPANY.
Held May 15, 1904.

Pursuant to notice (or call and waiver of notice), a Special Meeting of the Stockholders of the New Era Printing Company was held at the office of said corporation, at No. 50 Printing House Square, in the City of Washington, D. C., at 10 o'clock A. M., on the 15th day of May, 1904.

The meeting was called to order by the President, J. F. Weston, the Secretary, also being present and acting as Secretary of the meeting.

Stockholders were present and absent as follows :

(Here insert list as in Form 116.)

The call and notice of the meeting (or call and waiver of notice) were ordered to be entered in the minutes, and are as follows :

(Insert as per the copy on file.)

The purposes of the meeting were then stated by the chair as set forth in the call, etc., etc.

Upon motion, the meeting adjourned until the following Monday, May 18th, 1904, at 10 o'clock A. M., in order that the stockholders might have further time to consider the question.

Attest : JAMES WILLARD,
President.
J. F. WESTON.
Secretary.

Form 119.

Minutes of Adjourned Meeting of Stockholders
of the
NEW ERA PRINTING COMPANY.
Held May 18th, 1904.

Pursuant to adjournment, the Special Meeting of Stockholders of the New Era Printing Company convened at the office of the Company, to wit, No. 50 Printing House Square, at 10 o'clock A. M., on the 18th day of May, 1904.

Stockholders were present in person or by proxy, and absent as follows :

(Here insert as in Form 116.)

The minutes ofthe preceding meeting, of which this meeting was t continuance, were read and approved, etc., etc. etc.

(Then insert the proceedings upon the proposition under consideration.)

There being no further business, an adjournment sine die was taken.

Attest : JAMES WILLARD,
President.
J. F. WESTON,
Secretary.

Form 120.

.....

Minutes of Annual Meeting of Stockholders
of the
NEW ERA PRINTING COMPANY.
Held Jan. 15, 1904.

The stockholders of the New Era Printing Company assembled in annual meeting in the office of the Company, No. 50 Printing House Square, on January 15th, 1904, at 10 o'clock A. M.

President Willard called the meeting to order, and presided during its deliberations, and J. F. Weston, Secretary of the Company, acted as Secretary of the meeting.

The roll of stockholders was called, and there was found to be present and absent as follows :

(Here insert according to the facts as per Form 116.)

The Secretary produced and submitted to the meeting the personal notice of the meeting, certified by him to the effect that copies of the same had been mailed to each and every stockholder on the 4th day of January, 1904 ; also copies of the "Washington Post," dated respectively, January 6th and 13th, 1904, containing notices of the meeting in the usual form. The certified notice and published notice were ordered filed.

The minutes of the last annual meeting and a special meeting, held May 15th, 1904, and of an adjourned meeting, held May 18, 1904, were read and approved, or (in lieu of approved), corrected in the following particulars, (state.) As so corrected, said minutes were then approved.

The annual report of the President was then submitted and read, and ordered filed.

The annual report of the Treasurer was submitted, read and filed.

(Here mention reports, if any, of standing and special committees.)

The election of Directors for the ensuing year being next

in order, the President appointed Henry L. Brown and Robert Ainslie as inspectors of the election; whereupon a vote was had by ballot. (Here nsert according to the fac's as per Form 117.)

There being no further business, the President declared the meeting adjourned sine die.

Attest:

JAMES WILLARD,
President.

J. F. WESTON
Secretary.

.....

§ 138. Oaths and Certificates of Inspectors.

Form 121.

.....

NEW ERA PRINTING COMPANY.

Annual Election, 1904.

OATH OF INSPECTORS.

United States of America, }
District of Columbia. } ss

We, the undersigned, having been duly appointed inspectors of election at the anual meeting of the stockholders of the New Era Printing Company, to be held at the office of said Company, 50 Printing House Square, Washington, D. C., on the 15th of January, 1904, being severally duly sworn, each for himself, and not one for another, deposes and says: I will faithfully execute the duties of inspector of election at said meeting, acording to the best of my ability and with strict impartiality.

JOHN GORDON,
JAMES KNOX,

(Notarial Jurat.)

.....

Form 122.

.....

NEW ERA PRINTING COMPANY.

Annual Election, 1904.

CERTIFICATE BY INSPECTORS OF ELECTION.

We, the undersigned, inspectors of election of the New Era Printing Company, hereby certify that the regular annual meeting of the stockholders of said corporation, held at its office, 50 Printing House Square, Washington, D. C., on the 15th day of January, 1904, a quorum was present, and we, after having been each of us severally and duly sworn, the oaths so administered to us being hereto attached, did conduct the election for Directors of said corporation; that the result of the balloting and voting thereat was the election by the plurality vote set opposite their respective names, of the following Directors, to serve for the term of one year from the date of said election:

Names.	Votes Second.
E. P. Jones	900
M. L. Bennett	900
Asa Roberts	900
James Willard	900
Robt. Ainslie	900

In testimony whereof, we have hereunto set our hands, this Jan. 15, 1904.

JOHN GORDON,
JAMES KNOX,
Inspectors.

(Notarial acknowledgment.)

.....

II. AT MEETINGS OF THE BOARD OF DIRECTORS.

§ 139. Order of Business.

The order of business for meetings of the Board of Directors will be briefer than for a stockholders' meeting, and may be as follows:

Form 123.

.....

1. Reading and approval of minutes.
2. Reports.
3. Unfinished business.
4. New business.
5. Adjournment.

.....

§ 140. Forms of Minutes at Various Kinds of Meetings of the Board.

The directors usually hold a meeting immediately after adjournment of the stockholders' meeting. If, however, all do not attend it would be open to objection on the ground that absent directors had no notice. Unless a call and waiver be executed, the secretary of the stockholders' meeting should give the newly elected directors immediate notice of their election. It is then their duty to meet and organize by the election of officers.

As to the length of the minutes of the first meeting of the Board of Directors, much will depend upon the character of the corporation as well as the nature and condition of the business.

In case of a corporation formed to merely continue an established business, little more may be required than to elect corporate officers.

In case of a newly formed corporation, whose operations are to be extensive, for instance, to engage in manufacturing on a large scale, to build a railroad, etc., it may be found necessary to hold sessions from day to day and transact a large volume and variety of business.

The first of the following forms fulfills ordinary requirements :

Form 124.

.....

Minutes of the First Meeting of Directors
of the
NEW ERA PRINTING COMPANY.
Held March 8th, 1904.

Pursuant to notice (or call and waiver of notice) the Board of Directors of the New Era Printing Company, elected at the annual meeting of stockholders March 1, 1904, assembled and held its first meeting in Room 15 at No. 50 Printing House Square, in the City of Washington, D. C., at 10 o'clock A. M. on the 8th day of March, 1904.

Mr. James Willard was selected to temporarily preside and Mr. J. F. Weston was appointed as temporary Secretary of the meeting. E. P. Jones, M. L. Bennett, James Willard, John Gordon and Asa Roberts, being all said Directors, were present.

The Secretary presented the notice (or call and waiver of notice) pursuant to which the meeting was held. It was ordered to be entered at length in the minutes, and is as follows: (Here insert the notice or call and waiver, according to the fact.) The election of officers for the corporation for the next ensuing year was then proceeded with and resulted as follows:

For President, James Willard received 4 votes.
For Vice-President, John Gordon received 4 votes.
For Secretary, J. F. Weston received 5 votes.
For Treasurer, James Knox received 5 votes.

And each and all were declared the duly elected officers as voted for. The permanent officers so elected assumed the duties of the officers to which they were thus elected and proceeded with the business of the meeting.

Upon motion, duly seconded, the Secretary was then authorized and directed to purchase for the use of the corporation the following books:

(Here insert same; see Chapter 15 and Forms therein found.)

It was moved and seconded that the Treasurer be authorized and directed to open an account with the Safety and Security Bank of Washington, D. C.; that all the funds of this company be deposited therein in the name of this corporation as the same shall come to his hands; such funds to be withdrawn only by check signed and countersigned as provided in the by-laws.

Upon motion, the President and Secretary were authorized and directed to lease a suitable office and principal place of business for this corporation, at a rental not exceeding $50 per month; also, to attend to the filing in the proper offices all documents required by law to be filed in State and County and district offices; also, to attend to the payment of the expenses incurred in the incorporation and organization of the company to this date; also to purchase any and all supplies and materials necessary to start the business for which this corporation was formed, and employ, and fix the salaries of all necessary agents and employees.

James Knox, the Treasurer, presented his official bond in conformity with the provisions of the by-laws, which was examined by the Board, approved and delivered to the Secretary.

There being no other business the meeting adjourned.

ATTEST: JAMES WILLARD, President.
J. F. WESTON, Secretary.

Form 125.

Minutes of the First Meeting of Directors
of the
CANAL AND WATER COMPANY.

Immediately after the adjournment of the Stockholders' meeting the directors-elect met at the office of the company to organize and qualify. Roll of Directors called and all were present. Mr. E. W. Burr presided temporarily and Henry Wardner acted temporarily as Secretary.

L. M. Sprague and C. L. Henry were placed in nomination for President, and the Board proceeded to ballot, with the following result: Mr. Sprague received 5 votes and Mr. Henry received 4 votes. L. M. Sprague having received a majority of the votes of this board, was declared duly elected President of this company. Mr. C. L. Henry being the only nominee for Vice-President, on motion, the Secretary was instructed to cast the ballot, and Mr. C. L. Henry was declared unanimously elected Vice-President of the company.

Mr. Henry Wardner being the only nominee for Secretary, on motion, Mr. Jenks was instructed to cast the ballot, and Henry Wardner was declared unanimously elected Secretary of this company.

J. W. Lasher and W. B. Linder were placed in nomination for Treasurer, and the Board proceeded to ballot, with the following results:

Mr. Lasher received 7 votes.

Mr. Linder received 2 votes.

Mr. J. W. Lasher having received a majority of the votes of the Board, was declared elected Treasurer of this company.

Mr. Sprague and Mr. Wardner here assumed their respective places and duties as President and Secretary.

Roll called and all the directors were present. A communication or protest signed by a number of stockholders was read by the Secretary. On motion the same was ordered filed. On motion it was unanimously decided that this Board of Directors purchase the water rights mentioned in communication of George Vann, upon the condition that the owners give a guarantee of the title to the same. On motion the President appointed J. S. Cowley, J. C. Stamper and D. Southwell as a committee to wait upon and confer with Mr. Vann in regard to the purchase of water rights. On motion, it was unanimously decided to call in twenty per cent. of the subscribed stock, in accordance with the agreement signed by the stockholders, and that P. L. Barker, the holder of the agreements, be notified to notify the parties and collect the same. On motion the bond of the Treasurer was fixed at $10,000; also the salary of the Secretary was fixed at $150 per month.

The following resolution was introduced and unanimously adopted:

RESOLVED, That the President appoint the following standing committees: A committee on printing, consisting of three directors; a committee on finance, consisting of three directors; a committee on auditing, consisting of three directors.

(Signed) J. S. CONLEY.

The President appointed J. S. Conley, M. C. Tebbs and D. Southwell as a committee on printing, and stated that the other committees would be appointed at a subsequent time.

On motion the President and Vice-President were appointed a committee and instructed to correspond with the proper parties with a view to the employment of an engineer. On motion H. L. Camfield was appointed as the attorney for the Board, his compensation to consist of fees. On motion the meeting adjourned, to meet at 1 o'clock P. M. Thursday, June 15, 1904.

.....

It is not absolutely necessary to state who was present and who absent, nor even that a quorum was present at an adjourned meeting. In the absence of anything in the minutes showing the contrary, the law will presume that those present at the previous meeting from which an adjournment was taken, continued in attendance.

The various methods of bringing about a meeting of the Board of Directors have been elsewhere considered. (See Chapter 12.)

The directors may, by unanimous consent, hold a meeting at any time without any preliminaries whatever. However held, the general form of the minutes will not vary materially, and the following forms will prove useful to secretaries in writing up their minutes of special meetings :

Form 126.

Minutes of Special Meeting of Board of Directors
of the
NEW ERA PRINTING COMPANY.
Held May 24th, 1904.

The Board of Directors met pursuant to notice to each and every member of the board (or call and waiver of notice, or by unanimous consent, all being present, according to fact) in special meeting in the office of the company, No. 50 Printing House Square in the City of Washington, D. C.

The meeting being called to order by President Willard, Directors Jones, Bennett, Willard, Roberts and Gordon answered present, being all the members of the Board.

The Secretary then presented the notice of the meeting (or call and waiver, or written consent, according to the fact) pursuant to which the meeting was held. There being no objection it was ordered to be entered in the minutes.

(Here insert same.)

The attention of the Board was then called by the President to the purposes for which the meeting was held.

(Here insert proceedings as taken.)

There being no further business the President directed the meeting adjourned *sine die.*

or

Further time being required for consideration an adjournment was taken to the following day at 10 o'clock A. M. at the same place.

ATTEST: J. F. WESTON, Secretary.
JAMES WILLARD, President.

Form 127.

Minutes of Regular Monthly Meeting of Directors
of the
NEW ERA PRINTING COMPANY.
Held April 15, 1904.

The Board of Directors of the New Era Printing Com-

pany met at the office of the Company, No 50 Printing House Square, on the 15th day of April, 1904. The meeting was called to order by President Willard, who presided during the meeting, J. F. Weston, the Secretary acting as such.

There were present Directors Jones, Bennett, Willard and Gordon; absent Roberts. (The balance of the minutes will be in the same form as at a special meeting. See Form 126.)

.....

Form 128.

.....

Minutes of a Regular Meeting of Directors, Showing Correction of Error and Re-levy of Asessment.

"Office Pernau Land and Water Company,

"March 15, 1904.

The Board of Directors of the Pernau Land and Water Company held their regular monthly meeting on the above date, Vice-President C. L. Henry, in the absence of the President, calling the Board to order. Upon roll-call the following Directors answered to their names: Simpson, Coggswell, Barnes, Henry and Johnson. Absent: Sprague, Jones, Tanner and Judson.

Minutes of the last regular meeting of the Board read and approved as read. On motion of Director Simpson, seconded by Director Barnes, the following resolution was duly adopted:

"Resolved, That, whereas, by inadvertence, certain errors occurred in the action of the Board of Directors of this corporation at its last regular meeting held on February 14, 1904, in the levying of an assessment upon the subscribed capital stock of this corporation, and whereas, by inadvertence, the notice of the levying of said assessment was not published as required by law, it is therefore hereby ordered that the action of the Board of Directors of this corporation, in the matter of the levying of said assessment, be and the same is hereby rescinded, and the action of the Secretary of this corporation in the matter of the publication of said notice of assessment be and the same is hereby annulled."

On motion of Director Barnes, seconded by Director

Johnson, the following order was duly passed and ordered entered of record, to wit:

"It is hereby ordered that an assessment, No. 1, of $10 per share, lawful money of the United States, be and the same is hereby levied upon the subscribed capital stock of this corporation, payable on the 20th day of June, to the Treasurer of said corporation, at his office, No. ..... Street, in the City of ....., State of ....., and that any stock upon which this assessment shall remain unpaid on the 20th day of August, 1904, shall be delinquent, and unless payment is made before, the same will be sold on the 31st day of August, 1904, to pay the delinquent assessment, together with costs of advertising and expenses of sale."

On motion of Director Henry, seconded by Director Coggswell, it was resolved that the Secretary of this corporation be and he is hereby instructed to give notice of the levying of the above assessment, as required by the statutes of this State, and thereafter if said assessment or any part thereof shall be delinquent, to give delinquent notice thereof, as required by the Statutes of this State. There being no further business the meeting adjourned.

.....

CHAPTER XV.

Corporate Books.

141. Uses and Form of Minute Book.
142. What Minute Book Should Contain.
143. Further as to Keeping Minutes.
144. Other Books Required to Be Kept.
145. The Stock Certificate Book.
146. The Stock Transfer Book.
147. Uses of the Stock Ledger.
148. The Corporate Calendar.

§ 141. Uses and Forms of Minute Book.

Among the indispensable books of a corporation is that in which a record of proceedings of membership meetings and the meetings of the Board of Directors is kept, commonly known as the Minute Book. This book, properly identified, is admissible in evidence to prove its contents, and establishes prima facie at least, that the meetings there recited as having been done, were done.

The keeping of the Minute Book pertains to the office of the secretary, and except for use at meetings, or in court, or upon special occasions and for special reasons, should not be taken, or permitted to be taken, from his possession. It is essential to the well being of the corporation that many matters should be therein recorded, and usually many other matters are noted there for convenience, merely.

A book proper for the purpose may usually be procured at any extensive dealer in stationery. It should be so ruled as to leave a wide margin to the left for the insertion of catch words indicating the subject

matter considered, or acted upon, at that particular point of the proceedings.

There is no legal objection to having the minutes copied with a typewriter and pasted into the book. And yet it is obvious that minutes so kept could be easily tampered with for fraudulent purposes. It will obviate all questions of this kind, provided the secretary is himself faithful, if the minutes are entered in a clear, legible hand, with pen and ink. The marginal references should be made with red ink, and the minute entries in ink of a different color.

§ 142. What Minute Book Should Contain.

Speaking in legal sense, the minute book is a journal of all meetings of the stockholders or members, and of the Board of Directors, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The second should embrace every act done or ordered to be done ; who were present, and who absent; and, if requested by any director, stockholder or member, the time should be noted when he entered the meting, or obtained leave of absence therefrom.

On a similar request, the ayes and noes should be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, stockholder or member to any action or proposed action should be entered in full.

If necessary or convenient, two minute books may be kept, one for directors' meetings and another for meetings of stockholders or members. In the case of

a corporation having frequent meetings at which much business is transacted, it would be better to keep two minute books, the size and number of pages to be determined by the probable volume of entries required to be made.

In the first pages, should be copied the certified copy of the articles of incorporation received from the Secretary of State, or other authority. The practice sometimes adopted of pasting this document in the minute book is not to be commended. There is danger of its becoming detached and lost; besides, it is sometimes needed in court to prove corporate existence, and it should not then be necessary to take also the minute book.

Another censurable practice is that or entering the by-laws in the minute book. The Book of By-Laws should be separate. The statutes of many of the States so require.

There should be a heading for each meeting which should be at the top of a page, and should designate whether the meeting was regular or special, and its date. No blank pages should be left between the record of one meeting and that of a succeeding meeting.

§ 143. Further as to Keeping Minutes.

The secretary of a private corporation whose business is worth recording at all occupies, with respect to keeping the minutes, a position the importance of which is not to be compared with that held by any other officer. Upon the question of whether accurate entries be made of the proceedings may depend other questions affecting interests of great magnitude and

value. Skill and talent herein, would not be important if a set formula could be given for every transaction of which a record is required. But in practice the business of the average corporation formed for profit assumes many phases, and the secretary should be qualified to adapt the entries to the nature of the business done and present the matter in clear, concise, unambiguous language. A verbatim report is not generally required, nor is it desirable, as a rule. But a record of the substance of all important proceedings, however little be their importance, should be made. Of course, the secretary cannot usually enter the record in the minute book while the meeting is being held. He keeps what is termed "Rough minutes," consisting of a brief statement of the proceeding, with as much detail as circumstances will admit of, including a reference to any letters, reports, or other documentary evidence presented at the meeting. These he should make and refer to as "Exhibit A," "Exhibit B," etc.

Soon after adjournment, or at least while the proceedings are fresh in his mind, he should record the minutes in extenso in the minute book. It is seldom necessary to copy therein any matters which have been presented in written form, unless he has been directed at the meeting to do so.

Of course, this suggestion does not apply to resolutions which should be copied fully. If the secretary cannot remember with requisite distinctness something transpiring at the meeting of sufficient importance to justify its being made a matter of record, and his memoranda are not sufficient to refresh his

memory, he may call to his aid the presiding officer, or any one present in whom he has confidence.

Where the minutes have been recorded they should be authenticated.

This is done simply by the proper signatures being attached thereto. Whether the signature of the secretary alone is sufficient, or that of the person who presided at the meeting should also be attached, depends upon the by-law provisions on the subject. In the absence of any provision on the subject, that of the secretary alone will suffice.

It is never necessary that the minutes be actually kept, or that they be recorded personally by the secretary. All except the act of signing may be done by an assistant or by any one specially employed. But the secretary, by accepting and occuping the office, undertakes that they shall be properly kept, and that they shall speak the truth.

Minutes are usually read and approved at a subsequent meeting, but there is no legal reason for not approving them at the same meeting. Upon their being approved, and the minutes of the meeting at which they were approved being recorded, the secretary should make an entry below his signature of the fact of their having been approved, thus:

"Approved January 26th, 1904, page 63."

§ 144. Other Books Required to Be Kept.

As to what books additional to those in which the minutes and the by-laws are kept, are needed, depends upon the nature or magnitude of the corporate enterprise, except where statutes are found prescrib-

ing what records shall be kept. It is not necessary however, to discuss such statutory provisions inasmuch as their requirements will usually correspond to the actual necessities of corporate management. These are, in the case of most corporations, the following :

A book known as the "Stock and Transfer Book," in which is kept a record of all stock, showing all transfers of stock, the date thereof, and by and to whom made ; a book containing the names and addresses of all of the stockholders or members, alphabetically arranged ; an assessment register, to contain a record of all assessments levied, when levied, amount, when paid, when noticed, when delinquent, etc, and a Book of By-Laws.

The foregoing may be regarded as the essential books; but others are nearly as necessary. For instance, the Day Book or Journal, Cash Book, and Ledger, and other regular books of account; and the treasurer usually keeps a separate book, sometimes called the "Treasurer's Cash Book."

Often, however, the bank where the deposits are made is elected or appointed the treasurer of the company, and keeps the account, as with any other person, keeping an account which is subject to check.

§ 145. The Stock Certificate Book.

The stock certificates are usually kept in a book, the cover of which is open at both sides and at one end. In this, any desired number of blank certificates may be contained, ready to be filled out, according

to name, date and number of shares. The book is so bound as to admit of the stub end, containing the data as to the issue being retained, thus constituting a complete current account of all such transactions. Each certificate and its stub contains, among the other matter, the serial number of the certificate, their numbers, running consecutively. Between the portion of each leaf containing a certificate and that constituting the stub, is a line of perforations, thus facilitating their separation.

If the certificate issued be in lieu of one surrendered in consequence of a transfer, that fact is entered on the stub, designating the number and holder of the certificate so surrendered, as well as the usual data as to the issuance of the new certificate. Certificates surrendered in consequence of a transfer, as well as when delivered up for cancellation for any other reason, should be stamped with the word "Cancelled," and filed away for future reference.

Where a book for the record of transfers is kept in addition to the stock certificate book—and this is the better method—the data just mentioned with reference to surrendred certificates need not be enterd on the stubs, as the entire matter, including the occasion for issuing the certificate, will appear in the Ledger.

If provision has been made in the by-laws for the issuance of preferred stock, the certificates for that are bound in a separate book, with its own separate serial numbering.

Sometimes the corporation desires to commence the issuance of its certificates before they are printed or engraved in satisfactory form and style. In that

case temporary certificates or vouchers showing that the holders thereof are entitled to certificates of the corresponding date and number of shares may be used until the certificates in the permanent form are ready. If this course be pursued, the certificates in regular form should not be issued until those temporarily issued, or the vouchers are returned for cancellation When the regular certificate book is received, enough blanks should be reserved at the beginning to fully represent such temporary issues. The data on the stubs of the latter should be transposed to the former, and the holders of the latter should be notified of the readiness of the corporation to make the exchange.

The process of issuing a certificate originally is somewhat different from that where there has been a transfer, or a surrender of outstanding certificates.

There are ample blanks on the stub to cover any circumstances. Fewer of them are required to be filled in where the issue is original, than when in lieu of one transferred or surrendered.

§ 146. The Stock Transfer Book.

For all legal purposes, the entries on the stubs in the certificate book are sufficient, and in a vast majority of corporations no separate transfer book is kept.

Where, however, the holders of certificates are numerous, or the stock is actively dealt in, a separate transfer book is a great convenience, inasmuch as, without it, the secretary might, every time a transfer was made, have to search through a number of stub

books in order to obtain a correct history of the stock so transferred.

The separate transfer book is also a more permanent record and better preserves the evidences of titles to stock. This book consists of printed transfers, identical with those seen on the back of the certificates bound together. When a certificate is surrendered and a new one, or more than one, demanded in lieu of it, the secretary requires its owner, if present, or, in his absence, the person designatd on the back of it as his attorney, (which, as has been shown, is usually the secretary himself), to sign the proper blank transfer or assignment in this book; and the secretary then fills in the blanks and makes in the margin the proper entries, to complete the history of the stock to date.

The following is one of such assignments in the book, complete, with the entries made in the margin already made by the secretary :

Form 129.

.....

Ledger Folio .... Transfer No. .....

NEW ERA PRINTING COMPANY.

For value received I hereby sell, assign and transfer to Philo Sawyer of the County (or City) of ....., State of ....., fifty shares of the capital stock of the above named corporation, the same standing at present in my name on the books of said company and represented by surrendered certificate No. ....., this May 10, 1904.

New Certificates, Nos. 48, 49.

Issued to Philo Sawyer, Ledger Fol. 78.

E. P. JONES,

By R. M. HALL, Attorney.

.....

The shares represented by more than one certificate may be included in one such entry by properly filling in the blanks.

The blank number of the transfer at the upper right hand corner may be printed when the book is made, the blanks being in consecutive order, consecutively numbered, or it may be left blank. There is this advantage in leaving it blank, one or more may be spoiled, and in case the numbers were printed in, then all subsequent numbers must be changed.

§ 147. Uses of the Stock Ledger.

In addition to the stock books above described, there may be others required by the statutes to be kept. These may be very conveniently and properly kept by those corporations, the magnitude of whose stock transactions justify it, another known as the Stock Ledger, having the same relation to the former that a ledger holds to the journal in ordinary bookkeeping. This ledger should contain the stock account of each individual stockholder and should, like any other ledger, contain an index, alphabetically arranged. It is properly made up from the entries in the two books previously mentioned.

When a person becomes the owner of stock, an account should be opened in the ledger in his name, and he should be credited with the stock owned. When he parts with part of it, he is debited therewith. When he parts with all of it, the account balances, and is closed. The ledger is the most convenient book for use at elections and in the disbursement of dividends. It should be devoted exclusively to the one purpose,

and neither the dividend nor the assessment account should appear therein.

These are separate matters, as is also the subscription account, and are kept by the secretary or treasurer, accordingly, as the by-laws provide in all ordinary corporations.

In the great public service, insurance, etc., companies, the bookkeeping is itself an enterprise of great magnitude, is a department of great importance, consists of many books designed speciayy for the affairs of the particular company, and may include books and systems of keeping them, unknown to the established science of bookkeeping.

The following is a form of an individual account in the ledger, and may be useful as a suggestion to secretaries and other keepers of corporation books:

Form 130.

STOCK BOOK AND STOCK LEDGER COMBINED.

Name and Residence	Date.	From and to Whom Transferred	Full Paid or Part Paid	Certificate Numbers		Number of Shares.		Balance
				Taken Out	Surrendered	Disposed of	Acquired	
	1904							
E. P. Jones, Georgetown, D. C.	Jan. 10	From original issue	Full Paid	50			50	
	Mar. 15	To John Goode.....	Full Paid	25	10	20		
	May 1	From James Burr..	Full Paid	10				

§ 148. The Corporate Calendar.

The corporate calendar is an affair of comparatively little importance, with small and "close" corporations, under no statutory obligations to make reports to State officers or to make publication of financial condition and the like. And yet few corporations making any pretensions to do business are so insignificant that a schedule of things of strictly corporate concern, to be done according to law at particular future dates, will not be found a wise safeguard against neglect and possible loss. Such schedule is called a "Corporate Calendar," and consists of memoranda of things to be done and the dates when they are required to be done, arranged in chronological order. It may be kept in a separate book devoted to that purpose exclusively, or it may be made out on a card and placed on or over the secretary's desk, or it may be in the form of memoranda under the dates on an ordinary calendar such as are in general use, so that in the transaction of routine business it will serve as a constant reminder.

The skeleton calendar found below is a suggestion merely, and before attempting to prepare a calendar, the statutes of the particular State should be consulted, in order to ascertain what duties are imposed upon the particular class of corporations at particular dates.

Form 131.

.....

CORPORATE CALENDAR.

1904.

Jan. 2. Franchise (or other) State tax payable. Must be

paid before ..... day of ..... Amount to be paid has been fixed at $.....

Jan. 5. Send out and publish notices of Annual Meeting to be held Jan. 15th.

Jan. 12. Endeavor to obtain call and waiver of notice for January meeting Board of Directors.

Jan. 14. Notice to be given of January meeting of Board of Directors to be held January ....., if not waived.

Jan. 15. Annual Meeting of Stockholders at 10 o'clock A. M. Prepare rough minutes on sheets, blank tally sheets, oaths of inspectors, certificates, etc.

Jan. 16. Meeting of Board of Directors at 10 o'clock A. M.

Jan. 15. Annual Reports to State ..... and to County ....., due on this date, and must be made before the end of the month. Find time to prepare it immediately after Annual Meeting.

Mar. 1. City (or County) assessment due between this date and the 15th of March. If not satisfactory when received, application for correction must be made to the Board of Equalization at its April meeting.

Feb. 10. Notice to Directors (or call and waiver) of notice for meeting February 15th.

Feb. 15. Meeting of Board of Directors, 10 A. M.

Mar. 11. Notice to Directors (or call and waiver of notice) for meeting Mar. 16th.

Mar. 16. Board Meeting, 10 A. M.

Apr. 3. Meeting of Board of Equalization of Assessments.

If this Company has any grievances consult Attorney.

Apply to Clerk of the Board for all blanks needed.

All other matters, such as date of payment of taxes, date of delinquency, penalties for non-payment, etc., may be entered.

April 10. Notice (or call and waiver) of Board Meeting on 15th.

April 15. Board meets at 10 o'clock A. M.
May 10. Notice, etc., of Directors' Meeting.
May 15. Meeeting of Board at 10 A. M.
(Same for each month.)

CHAPTER XVI.

Sharing in Profits of Corporation—Herein of Dividends.

149. Meaning of, and Rules Governing Dividends.
150. Dividends on Preferred Stock.
151. Resolution Declaring a Dividend.
152. Notice of Dividend.

§ 149. Meaning Of, and Rules Governing, Dividends.

A dividend declared of the earnings of a company becomes thereupon the individual property of the stockholder, to be received by him on demand. It is a severance from the common fund of the company of so much for the use and benefit of each stockholder, in his individual right, which may be demanded by him, and if refused, becomes the subject of an action for money had and received to his use.

After a dividend has been declared, each party entitled has a right in severalty to his particular proportion.

The interests of those entitled to dividends becomes not only several and distinct, but positively adverse to each other, so that one can not be said to represent the other as to dividends already declared.[1]

The directors alone have the power to declare a dividend of the earnings of the corporation. To them the law entrusts the management of the corporate business, and they are best able to determine whether financial conditions will warrant the payment of a

dividend. They may not only declare the amount of dividends, but also the time for their payment. They have the like power to appoint a place of payment, so that it be within a reasonably convenient distance from the place of business of the corporation and from that of the stockholders.

The directors often select a banking house or the office of a trust company of good credit and constitute it the agent and register of the corporation for the payment of dividends, depositing the money there for the purpose. There is no doubt of their authority to do so ; but they should give notice of the arrangement to all the stockholders entitled to participate.

Stockholders are entitled to notice of the declaration of a dividend, since it cannot be assumed or maintained as a legal proposition that every stockholder in a company, either knows, or is bound to know, all the doings and proceedings of its officers at the time or times when they occur.

It is true that the interests of the stockholders may be legally affected by the action of a company through its officers, but as between the stockholders and the company itself, touching any claim which they have against it, when in a solvent condition, they stand in the same position to it as a stranger; and, except as to reports and the like, which may be made to the stockholders exclusively, they are about as ignorant of its affairs as he.

No notice, therefore, of the declaration of a dividend, or of the placing of money on deposit for its

payment is presumed from the mere fact that one is a stockholder.

Until a dividend is declared, the fund out of which dividends may be paid belongs solely to the corporation, and is answerable for its debts;[2] but a dividend once declared is a thing done, the profits being answerable to it in actual specie, and are by the declaration separated from the corporate property, and declared to be and then to become the individual property of the stockholder.

The corporation may or may not be liable for the loss of the fund set apart for the payment of a dividend. In its keeping, they are only bound to ordinary diligence.[3]

After the declaration of a dividend, and the appropriation of a fund to its payment, such fund acquires the character of a trust fund, and must be thenceforth regarded as the property of the stockholders. It cannot be applied by the directors to any purpose not included in the charter or fundamental compact among the incorporators, without the consent of the latter.[4]

Barring the rights of the holders of preferred shares, the directors have no power to discriminate among its stockholders in respect to dividends any more than in any other respect.

In the exercise of equitable jurisdiction, the courts will sometimes interfere to compel the directors of a corporation to declare a dividend, but only where they are unreasonably withholding the dividend, under circumstances indicating bad faith.[5]

It is a well settled principle that dividends can only

be declared and paid out of profits and cannot properly be declared and paid out of capital except in the liquidation when creditors must be first paid, and if anything is left over, it may be distributed to the stockholders in the form of dividends.[6]

The reason for this rule is that the capital represented by the stock of a corporation is a trust fund for its creditors and the law does not permit the shareholders to divide it among themselves until upon winding up the business, all creditors have been paid.[7]

But if dividends have been actually paid to the shareholders out of profits, the fact that the corporation subsequently becomes insolvent, does not place them under any obligation to refund such dividends.[8]

If, at the time of liquidation, some of the shareholders have paid for their shares in full, and some have paid only in part, or not at all, and a surplus is left after paying the debts of the company, those who have paid in full are entitled to such an adjustment out of the surplus as will place all the shareholders on an equality, prior to any payments being made to the delinquent shareholders.[9]

A dividend declared upon pledged stock is the property of the pledgor, the same as the stock, but the pledgee has the right to collect it, if he can, and apply it upon the debt of the pledgor, yet his failure to collect it does not cast upon him the duty of crediting it upon the indebtedness.[10]

§ 150. Dividends on Preferred Stock.

The proprietorship of a preferred shareholder in the earnings is a right to receive from them so much a year, if earned, before the common stock receives any dividend therefrom, and when the two classes of stock have each received the same specific amount out of the year's net earnings, he has the right to share equally in the surplus with the holder of common stock.

And the case is not altered by the fact that the preferred dividend is called interest. It is really a dividend, to be paid on stock and out of net profits. Creditors may resort to the holding of their debtor's property for interest as well as principal; but the holders of preferred stock are limited, for any income or interest to the net earnings.

And though the holders of preferred stock took themselves in the first instance in satisfaction of indebtedness held by them against the corporation, the case is not altered, even if such indebtedness was secured by a lieu upon corporate property. By accepting the stock they abandon the position of creditors and take up toward existing and future creditors the same position which every stockholder in a corporation occupies toward existing and future creditors.[11]

§ 151. Resolution Declaring a Dividend.

A certain degree of formality and reasonable certainty is required in a resolution declaring a dividend. It may be in the following form:

Form 132.

.....

Be it resolved by the Board of Directors of the New Era Printing Company that an annual dividend of three per cent on the subscribed capital stock of said corporation be, and the same is hereby declared, out of the surplus earnings already accrued or about to accrue and be realized from profits in carrying on its business; that said dividend be payable in money to the stockholders in proportion to the number of shares held by them respectively, at the rate of three dollars per share on the 1st day of December, 1904, subject to their respective orders at the office of the Treasurer, 50 Printing House Square, Washington, D. C.

.....

The following is another sufficient resolution declaring a dividend:

Form 133.

.....

Be it resolved by the Board of Directors of the New Era Printing Company that the sum of ten thousand ($10,000) dollars be, and said sum is hereby appropriated and set apart, from the surplus profits of said corporation for the payment of the regular annual dividend of ten per cent. upon its outstanding stock, said dividend to be payable on the 15th day of June, 1904; that the Treasurer be, and he is hereby authorized and directed to notify the stockholders of such dividend, and to pay the same out of said appropriation when due.

.....

§ 152. Notice of Dividend.

Notice of a dividend should be promptly given to all not already cognizant that it had been declared; otherwise some might sell and transfer the stock in ignorance of it and suffer loss or cause complications. It may be as follows:

Form 134.

.....

Office of the New Era Printing Company,
50 Printing House Square,
Washington, D. C. May 16th, 1904.

To the Stockholders of the above-named Company:

Notice is hereby given that at a meeting of the Board of Directors held on the 15th day of May, 1904, a dividend of ten per cent. was declared from the net earnings of the Company for the six months ending May 1, 1904. Said dividend will be paid on May 30th, 1904, to all who were stockholders of record on the books on Many 20th, 1904, the date for closing the transfer books.

The Stock transfer book will be closed at 5 o'clock P. M. May 20th, 1904, and will be reopened May 30th, 1904, at the commencement of business, to wit, at 9 o'clock A. M.

.....

A notice that a dividend has been declared on preferred stock should be the same as the above, except that the words "on the preferred stock" should be contained between the words "per cent." and "was declared."

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[1] King v. Paterson, etc. R. R. Co., 29 N. J. L. 87; State v. Baltimore & O. R. R. Co., 6 Gill. 363; City, etc., v. Toledo R. R. Co., 6 Ohio R. 489.

[2] Lockhart v. Van Alstyne, 31 Mich. 76; Stevens v. South Devon R. Co., 9 Hare 312; Henry v. Great Northern R. Co., 1 De Gex & J. 605; Taft v. Hartford, etc., R. Co., 8 R. I. 310.

[3] See Le Roy v. Globe Ins. Co., 2 Edwd. Ch. R. 657.

[4] March v. Eastern R. R. Co., 43 N. H. 515.

[5] McNab v. McNab Manfg. Co., 41 N. Y. St. R. 916; Fougery v. Cord, 50 N. J. Eq. 185.

[6] Ryan v. Leavenworth, etc., R. R. Co., 21 Kan. 365.

[7] Kahl v. Lillianthal, 81 Cal. 378.

[8] Reid v. Eatonton Co., 40 Ga. 98.

[9] Krebs v. Carlisle Bank, 2 Wall Jr. (U. S.) 33.

[10] Savings' Bank v. Middle Kauff, 113 Cal. 463; McAuley v. Moody, 128 Cal. 202.

[11] Warren v. King, 108 U. S. 389.

CHAPTER XVII.

Transfer of Stock.

153. Of the Transferable Character of Shares.
154. Rights and Remedies Where Corporate Officers Refuse or Neglect to Register a Transfer.
155. Convenient Method of Consummating Transfer.
156. Blank Assignment and Power of Attorney on Back of Certificate.
157. Transfers Through Stock Registrars and Transfer Agents.
158. Issue of Two or More Certificates in Lieu of One Previously Issued.
159. Stolen and Lost Certificates.
160. Stockholder Protected Against Transfers Induced by Fraud Practiced by Others upon the Corporation.
161. Duties of Officers Pertaining to Lost and Stolen Certificates.
162. Right of Transfer Cannot Be Subjected to Unreasonable Restrictions.
163. Corporation Has No Common Law Lien but May Offset Indebtedness of Stockholder Against Dividends.
164. Relative Rights of Parties to Transfer with Respect to Dividends and Voting Privileges.
165. Transfer with Reservation of Dividends.

§ 153. Of the Transferrable Character of Shares.

Certificates of stock have sometimes been termed quasi negotiable instruments. It is well settled that they are not negotiable commercial paper so as to pass from hand to hand by mere delivery. But notwithstanding a by-law regulating transfers, prescribing how they shall be made, and for a record thereof in the proper book of the corporation, rights vest upon

a mere sale and delivery of the certificate which a court of equity will enforce, at least to the extent of compelling the proper transfer to be made by the corporation. But as between the immediate parties equity will not interfere when the market value of the stock at the date of the sale is ascertainable, because of an adequate remedy at law.

A transfer of stock may be valid as between the immediate parties to the transfer, but of no binding effect upon the corporation or third parties whose rights intervene between the date of the transfer and that of entering it on the books of the corporation and substution of a new certificate for the original.

Under statutes providing that shares of stock, for which certificates have been issued, "are personal property and may be transferred by indorsement by the signature of the proprietor, his agent or attorney, or legal representative, and the delivery of the certificate," the rights of transferrees upon such a transfer have been often protected by the courts.[1]

The rule requiring the transfer to be on the books of the corporation goes no further than is necessary for the protection of the corporation in the payment of dividends and the like.[2]

In a few States, statutes provide that the stock is "transferable only on the books of the company," etc. In such States, and with respect to the shares of corporations created under their laws, the above statement does not hold good.[3]

Obviously, stock interests in corporations being personal property, vest in executors and adminis-

trators of estates upon the death of the original owners.

§ 154. Rights and Remedies Where Corporate Officers Refuse or Neglect to Register a Transfer.

After the certificate has been issued an assignee of shares represented by it can maintain an action of assumpsit against the corporation wrongfully refusing to make the proper transfer on its books.

The refusal of the secretary will be treated, for the purposes of the action, as the refusal of the corporation. The measure of damages in such a case would be the full value of the shares at their highest price at any time between the refusal and the commencement of the suit.[4]

The refusal to make the transfer is treated, for the purposes of the action, as a conversion of the shares.[5]

§ 155. Convenient Method of Consummating Transfer.

The inconvenience of resorting to the office of the corporation in every instance of a sale of stock is avoided, in practice, however, by the vendor of the stock executing a combined assignment and power of attorney in blank, and delivering it with the certificate to the purchaser. This may be, and usually is, printed upon the back of the certificate. The vendor of the stock wishing to complete the transfer and become a full fledged stockholder of record, then writes his own name in the proper blank and also in the proper blank the name of himself, the secretary of

the company or of some other person as the attorney in fact to execute the transfer upon the transfer book. For the convenience of all parties, the name of the secretary is here almost invariably used. The person so designated then surrenders the certificate to the secretary, who cancels it and issues to the new holder a new certificate, or certificates, in the latter's own name, representing the same interest as that surrendered. An entry is then made by the secretary or bookkeeper in the transfer book, showing the transaction.

Simultaneously with the entry in the transfer book and issue of the new certificate, the proper entries should be made on the stubs of the stock certificate book.

§156. Blank Assignment and Power of Attorney on back of the certificate.

When a certificate book is ordered, the purchaser should see that an assignment in blank, and power of attorney are printed in proper form on the back. This greatly facilitates dealing in the shares represented by the certificates, besides subserving the convenience of the secretary.

If the blank assignment and power of attorney are legally sufficient—and this should be seen to before the printing is done or the stock certificate book purchased—the secretary will be thus relieved of all risks on questions of their legal sufficiency, and delay may be avoided, when application is made to have a transfer entered and a new certificate issued. The owner of the certificate then merely has to sign his

name to the assignment and also to the power of attorney. He may also fill in the blanks therein, but usually—especially where the stock is freely dealt in, or is active on the exchanges—he merely signs. The advantages of leaving the blanks unfilled, are that the certificate does not have to be surrendered, and a new one issued for each transfer. The stock may thus be sold an indefinite number of times without a resort to the office of the corporation, a mere delivery of the certificate being all that is necessary to consummate the sale. If the certificate finally reaches the hands of one who prefers to retain the stock as a permanent investment, he may fill in all the blanks, including the insertion of his own name as assignee, date of his purchase, etc., and the name of some one as attorney-in-fact to make the transfer. He may insert his own name as attorney-in-fact if he prefers, but the convenience of all parties, including the secretary of the corporation, will be served by inserting the latter's name.

It is not necessary, however, that the name of any one be inserted as attorney-in-fact. If the certificate properly signed, be presented to the secretary, he will write in his own name as attorney-in-fact. It is only necessary in such case that the secretary be satisfied of the genuinness of the signatures of the original owner. If he be not satisfied he may require proof and thus cause trouble and delay. Any person to whom the certificate is offered for sale, may also question the genuinness of the signature. To avoid all this, it is best, when the first transfer is made, the owner acknowledge his signature be-

fore a notary public, and for this purpose a blank form for a notarial acknowledgement should follow the other printed matter on the back of the certificate. When the new certificate is issued, the person to whom it was issued should be required to sign a receipt for it on the line left for that purpose on the stub.

§157. Transfers Through Stock Registrars and Transfer Agents.

An agent designated the stock registrar or transfer agent, is provided for by some of the large corporations whose shares may be widely scattered in the hands of many persons and actively dealt in upon the stock exchanges.

Often a trust company, in the city where the stock is so dealt in, is selected for that office, and given possession and control of all the stock books of the corporation to enable it to perform the duties of that office correctly and expeditiously. It has the advantage of preventing fraud in the issue and disposal of the stock, and renders an over-issue improbable, thus inspiring public confidence among those holdings, or who may be disposed to invest in the stock. The registrar supervises the surrender, transfer issue and cancellation of certificates, keeps a record of every transaction properly brought to his attention, and authenticates with his, or its signature every certificate issued, and thus guarantees its proper issue and recordation.

In case the laws of the State by which the corporation was created requires its principal place of business to be maintained therein, and its books to be

there kept, the registrar, though in another State, may be furnished a copy of the original stock books, and from day to day, transmit to the home office a statement of transactions in the stock from which the proper entries may be made in the original books of the corporation.

§ 158. Issue of Two or More Certificates in Lieu of One Previously Issued.

The by-laws usually provide for the surrender of a certificate and the issue of others in lieu of the same, the new to represent in the aggregate the number of shares represented by the original. Such change may be desired for any of a variety of reasons unnecessary to mention. Such new issue of two or more in lieu of one may be required by the exigencies of trade, for instance, the owner of 500 shares, represented by one certificate, may find a purchaser for 250 shares, neither party may desire that delivery and payment be postponed until the vendor can procure two new certificates in lieu of the 500 share certificate. In that case the vendor may so change the form of his assignment as to limit it to 250 shares. Upon presentation of the certificate so assigned, the secretary will make the proper cancellation and new issue, filling out and authenticating certificates representing 250 shares in the name of an assignee, and another for a like amount in the name of the assignor. The former he will deliver, the latter he will retain, attached in the certificate book, subject to the order of the assignor.

The contrivance suggested above is not free from objections, and should not be adopted except in cases

of extreme urgency and perfect reliance upon the fidelity of the vendee.

Pending his presentation of the certificate to the secretary, the vendor would not have in his possession any evidence whatever of title to the 250 shares remaining unsold, and if his vendee saw fit to do so, he might be in a position to cause much trouble, and even loss, by postponing presentation to the secretary. So, if possible, in the case above supposed, the owner should have the deal disposed of at the office of the secretary, both certificates being properly issued in lieu of the original, or he might have both the new certificates issued to himself and then consummate the sale in the usual form. If meantime the other party should have withdrawn his offer, the only loss would be an opportunity to make the sale to him.

Precaution sufficient to prevent fraudulent use of surrendered certificates should be taken by the secretary. In addition to stamping the word, "cancelled," upon its face, he should, with a pen, mark off the signatures to the certificate, and then attach it with mucilage or some other adhesive substance to the stub from which it was originally detached.

§ 159. Stolen and Lost Certificates.

If a certificate for stock be issued as fully paid which in fact is not fully paid, and then come into the hands of a purchaser having no notice of its having been fraudulently issued, he derives title to the stock as fully paid. But the case of a stolen certificate, though the assignment has been executed in

blank stands upon a different footing. The purchaser thereof derives no title either as against the person from whom it was stolen or against the corporation. A holder of a stolen certificate can claim no equitable superiority to the thief who stole it, and hence acquires no title for any purpose.

Provision is usually made in the by-laws for the issue of certificates in lieu of others that have been lost or destroyed by accident.

If the certificate has been stolen from the owner, he is as much entitled to a new certificate as if the original were lost. The facts by which the loss or destruction is proven should be fully disclosed, nor should officers assume the responsibility of issuing certificates in place of any alleged to have been lost, destroyed or stolen, without express authority from the Board of Directors.

§ 160. Stockholder Protected Against Transfer Induced by Fraud Practiced by Others Upon the Corporation.

It scarcely need be stated that a stockholder cannot be deprived of his shares in a corporation by any mere act of the latter to which he does not consent. Nor is he responsible for any act of the corporation induced by fraud practiced upon it touching or affecting his interest or relation as a stockholder, for instance, by means of a forged assignment, or power of attorney.[8]

The relation of the corporation and its officers to the stockholders, with respect to transfers, are similar to those of a bank to its depositors. The officers

are the custodians of its stock books, and it is their duty to see that all transfers of shares are properly made, either by the stockholders or persons having authority from them. If, upon the presentation of the certificate for transfer, they are at all doubtful of the identity of the party offering it, with its owner, or if not satisfied of the genuineness of a power of attorney produced, they can require the identity of the party in the one case, and the genuineness of the document in the other, to be satisfactorily established before allowing the transfer to be entered. In either case they must act upon their own responsibility. Neither the absence of blame on the part of the officers of the company in allowing an authorized transfer of stock, nor the good faith of the purchaser of stolen property, will avail as an answer to the demand of the true owner.[7]

§ 161. Duties of Officers Pertaining to Lost and Stolen Certificates.

If, upon the presentation of a lost or stolen certificate to the secretary, after the assignment had been fully made out, he should cancel it, and issue a new one to a bona fide purchaser from the thief, the question of his liability to the corporation would depend entirely upon the question of whether he had previous notice of the loss or theft. If he either had notice of all the facts, or of sufficient facts to have put him upon inquiry, he would be personally liable to the corporation to the extent of any loss sustained by any purchaser of the new certificate purchasing without notice of the facts, but if, at the time of its pres-

entation for transfer the secretary had such notice or knowledge, he should refuse to issue a new certificate and lay the matter before the Board of Directors, or the managing officer, But the mere loss of a certificate, whether by theft or otherwise, cannot deprive the owner of the stock represented by it of his property therein. It is the duty of the Board of Directors, upon satisfactory showing of the loss, and upon compliance with reasonable conditions, to cause to be issued to him a new certificate or certificates for all the stock owned by him. He may, and should, be required to first execute and deliver to the corporation an indemnity bond in an amount sufficient to secure it against any possible loss and with solvent sureties.

But it should be borne in mind that neither the finder of lost certificates, nor any party purchasing from him, nor the first nor any subsequent purchaser of stolen certificates, acquires any right as a stockholder. It is against any possible fraud of the true owner of the stock that security is required in such cases.

The rights and remedies between a true owner and a purchaser of lost or stolen certificates is a question hardly germane to the present subject, but it may be incidentally remarked that it would probably be held negligence so gross to assign stock in blank and then keep it loosely and carelessly, thus permitting it to be lost or stolen, as amounting to a fraud, and thus render the owner liable to make good any loss to a bona fide purchaser from the finder or thief.

That the owner cannot be deprived of his property in the stock, or of his status as a stockholder in such cases, is apparent when it is considered that the certificate is merely prima facie evidence of his interest and title, which is conclusively shown by the books of the corporation. In case the stock represented by the lost or stolen certificate is considerable in value or amount, or the proof of loss or theft not satisfactory, cautious directors will refuse to issue a new certificate until compelled to do so by a decree of court. Such decree will protect them from liability to the corporation.

§ 162. Right of Transfer Cannot Be Subjected to Unreasonable Restrictions.

There can be no legal restriction upon the right to purchase and own, any more than upon the right to sell and transfer stock in a private corporation. It is as clear as the right to become the owner of any other species of property, nor is the motive of the person acquiring ownership a proper subject for investigation, while the motive is not in itself unlawful.[8] This untrammelled right to dispose of stock is not lost by one merely by his becoming a director of the corporation. A director may, in the absence of devices which are positively fraudulent, act upon the knowledge acquired by him in that position in the purchase and sale of its stock without incurring any liability based upon his fiduciary relation to the corporation. If, for instance, he have exclusive knowledge that a call is about to be made, there is no legal objection to his taking advantage of such knowledge to dispose

of all his shares, though it disqualify him for further acting as director.[9]

But a transfer of shares in fraud of creditors rests upon the same footing as other transfers of personal property for the same purpose.

Such transfers are good, however, as between the immediate parties thereto; and when one transfers his stock to place it beyond the reach of creditors, courts will not aid him to recover it back from the transferees, especially when it appears that his creditors were influenced in giving him credit by the fact of his ownership of it.[10]

The general principle is that while the corporation may, in its by-laws, or established usage, reasonably regulate the method of transferring its shares, yet it cannot prevent such transfers, nor prescribe to whom the owner may sell them nor to whom not, nor upon what terms.[11]

Whether a by-law unanimously adopted, forbidding any corporation transferring any of his shares without unanimous consent, would be valid, seems to be an open question. Such a by-law would not, however, affect the title of a purchaser who purchased shares in the company without notice of such a by-law.[12]

§ 163. Corporation Has No Common Law Lien, But May Offset Indebtedness of Stockholder Against Dividends.

The mere relation of the stockholder to the corporation affords no basis for any claim of a lien.[13] There is no common law right of lien by a private

corporation upon the shares issued by it as security for indebtedness to itself of the holders of such shares[14] It has been sometimes claimed that a different rule applied as to dividends, and that the corporation could withhold dividends until indebtedness of the stockholder was paid.

It is true that the corporation can withhold the dividends, but the right to withhold them does not rest upon the theory of a lien but upon the right to offset the dividend against an existing indebtedness.[15]

§164. Relative Rights of Parties to Transfer With Respect to Dividends and Voting Privileges.

It was stated above that intermediate transfers of the certificate before having entries made in the stock certificate book need not be regarded, and that delay in having a transfer made, while the stock is being actively dealt in is of no consequence. While that is true, as respects the validity of transfers and as affecting the right to finally have the transfer made, yet the question of the right to vote and to draw dividends connects itself with the main question. The law entitles the person whose name stands upon the books of the corporation to vote and draw dividends; and if the right to vote the stock be considered of any value, or if it be dividend-paying stock, it will behoove each assignee to have the transfer duly entered and a new certificate issued to him immediately upon becoming entitled to have that done.

In case of a mere transfer and assignment, the assignor would still have the right to vote at a meeting held prior to a transfer on the books of the company.

If, however, the assignment were given too late to have the transfer made on the books for any particular meeting, he could give the assignee a proxy, and in the same instrument revoke any outstanding proxy.

As between vendor and vendee of shares of stock, it is the settled rule that the vendee is entitled to all the dividends on the stock which are declared after the sale of the stock.

In other words, dividends belong to the person entitled to the stock when the dividends are declared.[16]

This is so as between the immediate parties to the transfer, though the transfer has not been recorded on the books of the corporation.

A pledgee is protected in the same way, as is a purchaser of the stock; and consequently, dividends declared during the continuance of the pledge belong to him, though he is not registered as owner on the corporate books.[17]

If not so registered, and the corporation pays the dividend in good faith and without notice of the transfer, to the nominal owner, as appears by its record, the payment would be undoubtedly a good one

If by the charter or statute the corporation is given a lien against shares to secure indebtedness of stockholders to it, a pledgee who neglects to notify the corporation that he holds the stock in pledge, or to take the proper steps to secure title to the stock in his own name, will not be protected against the lien of the corporation upon the stock, to secure the payment of an indebtedness contracted to the company

by the pledgor in the meantime, and subsequently to the pledgee of the shares.[18]

And the same rule would apply when, instead of being a mere pledge, there was an outright sale.

§ 165. Transfer With a Reservation of Dividends.

It is sometimes desirable to sell or donate stock, but to reserve to the vendor or donor the dividends for a fixed period, or during life. Such transactions are valid and enforceable.[19]

The following is a proper form for such transfer, to be endorsed upon the stock certificate:

Form 135.

.....

For value received, I hereby sell, assign and transfer to John Roberts the shares of stock within mentioned, reserving to myself the dividends declared upon the same during my life, and authorize the secretary of said corporation to enter such transfer on the books of said corporation.

Dated Jan. 2, 1904. WILLIAM ROBERTS.

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[1] See Ashton v. Zella Min. Co., 134 Cal. 408, and cases there cited.

[2] Ellis v. Proprs. Essex, etc., Bridge, 19 Mass. 243; Robinson v. Nat. Bank, 95 N. Y. 637. 642; Hill v. Atoka Coal and Min. Co., 21 S. W. Rep. 508; Spreckles v. Nevada Bank, 113 Cal. 272, 276.

[3] Northrop v. Newton, etc., Tp. Co., 3 Conn. 544.

[4] Commercial Bank v. Kortright, 22 Wend. (N. Y.) 348.

[5] Baltimore, etc., Ry. Co. v. Sewell, 35 Md. 238; Scripture v. Francestown Soapstone Co., 50 N. H. 571; Arnold v. Suffolk Bank, 27 Bash. (N. Y.) 424; Bank of America v. McNeil, 10 Bush (Ky.) 54; Sargent v. Franklin Ins. Co., 8 Pick. (Mass.) 90; Helm v. Swiggett, 12 Ind. 194; Merchants' Nat. Bank v. Richards, 6 Mo. App. 461; German Union Building Assn. v. Sendmeyer, 50 Pa. St. 67; Protection Life Ins. Co. v. Osgood, 93 Ill. 69.

[6] Telegraph Co. v. Davenport, 97 U. S. 369; Pratt v. Taun-

ton Copper Mfg. Co., 123 Mass. 110; Pollock v. National Bank, 7 N. Y. 274; Hambleton v. Central Osio, etc., R. R. Co., 44 Md. 551.

[7] Brown v. Howard Fire Ins. Co., 42 Md. 384; Central R. R., etc., Co. v. Ward, 37 Ga. 515; Telegraph Co. v. Davenport, 97 U S. 369, citing cases.

[8] Carson v. Iowa City Gas Light Co., 80 Ia. 638.

[9] Re Cawley, 42 Ch. Div. 209.

[10] Hirsch v. Norton, 115 Ind. 341.

[11] Chateau Spring Co. v. Harris, 20 Mo. 382; Farmers' etc., Bank v. Wasson, 48 Ia. 336; Sargent v. Franklin Ins. Co., 8 Pick. (Mass.) 90; Quiver v. Marblehead Ins. Co., 10 Mass. 476; United States v. Vaughn, 3 Binn. 394.

[12] See Farmers', etc., Bank v. Wasson, 48 Ia. 336.

[13] Massachusetts Iron Co. v. Hooper, 7 Cush. Mass.) 183; Farmers' Bank v. Wasson, 48 Ia. 336.

[14] Gemmell v. Davis, 75 Md. 546; Farmers', etc., Bank v. Wasson, 48 Ia. 366; Massachusetts Iron Co. v. Hooper, 7 Cush. (Mass.) 183; Bank v. Pinson, 58 Miss. 421; Heart v. State Bank, 2 Dev. Eq. N. C.) 111; Dana v. Brown, 1 J. J. Marsh (Ky.) 304; Merchants' Bank v. Shouse, 102 Pa. St. 488; Williams v. Lowe, 4 Neb. 382.

[15] Gemmell v. Davis, 75 Md. 546.

[16] Abercrombie v. Riddle, 3 Md. Ch. 320; Gemmell v. Davis, 75 Md. 546.

[17] Hill v. Newichawanick, 8 Hun. 459; S. C. 71 N. Y. 593.

[18] Gemmell v. Davis, 75 Md. 546.

[19] Calkins v. Equitable Building, etc., Assn., 126 Cal. 531.

CHAPTER XVIII.

Amendment of Articles of Incorporation.

166. Statutes Allowing Amendment.
167. Procedure for Increase of Number of Directors.

§ 166. Statutes Allowing Amendment.

Under the corporation laws of most of the States, there are two methods for the accomplishment of the object sought by amending the articles:

1. By passing the necessary resolutions and filing certified copies thereof with the articles; or 2. Executing amended articles of incorporation and filing these with the same officers. The forms following this are self-explanatory. Nothing need be said here as to amended articles. They are in exactly the same form as original articles, are executed similarly, and governed by the same laws as to their construction, force and effect.

§ 167. Procedure for Increase of Number of Directors.

Form 136.

....

Certificate as to Increase of Directors
of the
NEW ERA PRINTING COMPANY.

We, the undersigned, James Willard, President, and J. F. Weston, Secretary of the New Era Printing Company, a corporation, do hereby certify that on the 25th day of January, 1904, at three o'clock P. M., a meeting of the Stockholders of said corporation was duly held at the office and principal place

of business of said corporation in the City of ....., State of ....., pursuant to due and regular notice to each of said stockholders.

That at said meeting all of the capital stock of said corporation was represented by stockholders in person owning same.

That said Stockholders' Meeting was called for the purpose of voting upon the question of increasing the number of the members of the Board of Directors of said corporation.

That at said meeting the following resolutions were passed by unanimous vote of the Stockholders of said corporation:

"RESOLVED, That the number of the Directors constituting the Board of Directors of this company be and the same is hereby increased from five (5) Directors to seven (7) Directors.

"RESOLVED, That the President and Secretary of this company be and they are hereby authorized to execute and file with the County Clerk of the County of ....., and with the Secretary of State, the proper Certificate showing the increase in the number of the Board of Directors of this company."

That said proceedings were had and taken under Section ..... of the Civil Code (or under an act entitled, etc.) of the State of .....

That thereby the number of directors constituting the Board of Directors of said corporation was increased from five (5) Directors to seven (7) Directors.

That said New Era Printing Company, a corporation, was duly incorporated on the 15th day of December, 1903, by filing its Articles of Incorporation with the County Clerk of the County of ....., State of ....., and on that day, and thereafter, filing a certified copy thereof with the Secretary of State of the State of .....

That under said Articles of Incorporation the office and principal place of business of said corporation is in the City of ..... and County of ....., State of .....

IN WITNESS WHEREOF, we have hereto set our hands

as President and Secretary of said New Era Printing Company, and hereto affixed the corporate seal of said Company this first day of May, Nineteen Hundred and Four.

J. F. WESTON, Secretary. JAMES WILLARD, President.

(Corporate Seal.)

.....

Form 137.

.....

Certified Resolution of Board of Directors upon Proposition to Amend.

Be it remembered, That at a regular meeting of the Board of Directors of the New Era Printing Company, held on the 15th day of January, 1904, at the office of the Company, ... Street, City of ....., County of ....., the full Board being present, the following resolution was introduced, and on motion made and seconded was unanimously adopted as follows:

"WHEREAS, It is the wish of the Stockholders of this corporation unanimously so expressed at a meeting of the Stockholders thereof, had on the 15th day of January, 1904, at its office aforesaid, when and where more than two-thirds of the stock was represented and voted that, the Articles of Incorporation be amended so as to provide for seven Directors, in lieu and stead of five, as recited in the original Articles of Incorporation.

"Therefore, be it resolved, that the President and Secretary of this corporation be and they are hereby authorized, empowered and directed, to do all things necessary and proper to amend the Articles of Incorporation of this Company to the end that its Board of Directors shall thereafter consist of seven members."

Resolved, that the following shall be added to and hereafter constitute a part of paragraph numbered "Fifth":

"That hereafter the number of Directors or Trustees of this Corporation shall be seven instead of five, and the names

and residences of the two additional Directors, in addition to the five originally provided for in the original Articles of Incorporation, and who are appointed to serve for the unexpired portion of the current corporate year are as follows, to wit:

Names.	Whose Residence is at
ROBT. AINSLIE,	Georgetown, D. C.
JOHN WARDLAW,	Washington, D. C.

State of .....
County of ..... } ss.

This is to certify that the foregoing is a true and correct copy of the resolution passed by the Board of Directors of the New Era Printing Company on the 15th day of January, 1904, that the undersigned James Willard is President and J. F. Weston is Secretary of the said corporation; and we do hereby certify as aforesaid.

JAMES WILLARD,
President,

J. F. WESTON,
Secretary.

(Seal.)

We, the undersigned stockholders of the New Era Printing Company, who have subscribed for and own more than two-thirds of the subscribed capital stock thereof, hereby and by these presents do assent to, confirm and ratify, the amendments of the articles of incorporation made by its Board of Directors on the 15th day of January, 1904.

Names: E. P. Jones, M. L. Bennett, Asa Roberts, James Willard, J. R. Woodlaw, John Goode, A. J. Knox.

State of .....
County of ..... } ss.

This is to certify that the above and foregoing assent of stockholders was by them duly made, signed and filed in the office of the Company on this 25th day of March, 1904, and

the said parties are the subscribers, owners and holders of more than two-thirds of the subscribed capital stock of the said corporation; that the same has been spread upon the records of this corporation and now constitute a part thereof.

J. F. WESTON,
Secretary.

.....

CHAPTER XIX.

Creating, Increasing and Diminishing Bonded Indebtedness.

168. Proceedings Practically the Same in All the States.
169. Certificate Setting Forth Proceedings to Be Filed with the County Officer Having Custody of the Articles of Incorporation.

§ 168. Proceedings Practically the Same in All the States.

The procedure to create a bonded indebtedness in the case of a single corporation, where there are no properties, franchises, capital stock, or indebtedness of other corporations involved, is practically the same as where several corporations have been consolidated. In the latter case the constituent corporations may have outstanding bonds, and the agreement to consolidate may and usually does provide for the surrender of these and the issue of those of the new corporation for them. In addition, it may be desired to obtain, by an issue of bonds, additional capital with which to improve the properties thus acquired and extend the operations of the new corporation.

The form here given will be found easily adapted to any circumstances. It was used for both creating and increasing bonded indebtedness.

The proceedings are initiated by the Board of Directors at a regular meeting of the Board, or at a meeting specially called for that purpose. A resolution is adopted which may be as follows:

Form 138.

.....

RESOLUTION OF BOARD OF DIRECTORS.

Whereas, the Directors of the Market Street Railway Company deem it expedient to create a new Bonded indebtedness to the amount of Seventeen Million Five Hundred Thousand Dollars ($17,500,000.00) in Gold Coin of the United States (a portion of which is to be used in retiring existing bonded indebtedness) and thereby to increase the present bonded indebtedness of the Company up to the amount in the aggregate of Seventeen Million Five Hundred Thousand Dollars ($17,500,000.00) in Gold Coin of the United States for the purpose of constructing and completing its railroads and paying off and discharging the debts incurred in the construction and completion thereof, with their equipments and for the purchase of railroads and other property within the purposes of the corporation, such new bonded indebtedness to be secured by mortgage upon the railroads and railroad lines, and certain properties of the said railway company to be prescribed in said mortgage; and

Whereas, this meeting has been regularly called for the purpose of considering the following resolutions and orders:

Resolved, That a meeting of Stockholders of said Company be and the same is hereby called to be held on the 15th day of May, 1904, at 10 o'clock A. M., at the office of said Company in Room No. ....., in ..... Building, at No. .... street, in the City of ....., State of ..... (the same being the principal place of business of said corporation and where the Board of Directors usually meets), for the purpose of considering and acting upon the proposition to create a bonded indebtedness of said railway company to the amount of Seventeen Million Five Hundred Thousand Dollars ($17,500,000.00) in Gold Coin of the United States (a portion of which is to be used in retiring existing bonded indebtedness) and thereby to increase its bonded indebtedness up to the amount in the aggregate of Seventeen Million Five Hundred Thousand ($17,500,000.00) Dol-

lars in Gold Coin of the United States and to secure the same by mortgage upon the railroads and railroad lines and certain properties of the Company, to be prescribed in said mortgage.

Resolved, that the Secretary of this Company be and he is hereby directed to cause to be published at least once a week for at least sixty days, beginning on the ..... day of ..... instant, in the "....," a newspaper published in the City of ..... (the City where the principal place of business of such corporation is located), a notice to the stockholders of said Company specifying the object of the meeting and the time and place of holding the meeting and stating the amount of the bonded indebtedness which it is proposed to create, and the amount which it is proposed to increase its present bonded indebtedness, such notice to be in substantially the following form:

Notice is hereby given that, in pursuance of a resolution and order of the Board of Directors of the Market Street Railway Company, unanimously adopted at a meeting of said Board, duly held at the office of the Company in the City of ....., State of ....., on the ..... day of ....., 19...., (all the members of said Board being present) a special general meeting of the Stockholders of said Market Street Railway Company will be held at the office of the Company in Room No. ....., in ..... Building, at No. .... Street, in the City of ..... (the same being the principal place of business of the said corporation and being the building where the Board of Directors of said Corporation usually meet), on the 15th day of May, 1904, at the hour of 10 o'clock A. M., for the purpose of considering and acting upon the proposition to create a bonded indebtedness of said corporation to the amount in the aggregate of Seventeen Million Five Hundred Thousand ($17,500,000.00) Dollars in Gold Coin of the United States (a portion of which is to be used in retiring existing bonded indebtedness), and to increase the bonded indebtedness of the corporation up to the amount in the aggregate of Seventeen Million Five Hundred Thousand ($17,500,000.00) Dollars in Gold Coin of the United States, and to secure the

Bonded indebtedness so proposed to be created, by a mortgage upon the railroads and railroad lines of said Company and certain properties belonging to the Company to be prescribed in the mortgage.

Dated the ..... day of ....., 19....

By the order of the Board of Directors,

J. F. MOULTON,
Secretary of the
Market Street Railroad Company.

(Corporate Seal.)

Resolved, further, that in addition to such notice by publication, the Secretary of this Corporation do also address a like notice to each of the Stockholders of said Company whose names appear on the Company's books and sufficiently addressed at his place of residence, if known, and if not known, then at the principal place of business of the corporation which notice shall be mailed to such stockholders at least thirty days before the day appointed for such meeting.

.....

§ 169. Certificate Setting Forth Proceedings to Be Filed with the County Officer Having Custody of the Articles of Incorporation.

Form 139.

.....

CERTIFICATE OF PROCEEDINGS AT STOCKHOLDERS' MEETING AUTHORIZING THE CREATION OF A BONDED INDEBTEDNESS OF THE MARKET STREET RAILWAY COMPANY.

We, the undersigned, John D. Wasson, one of the Directors of The San Francisco and San Joaquin Valley Railway Company, and Chairman of the meeting of Stockholders of said Company held on the 15th day of May, A. D. 1904, at ten o'clock in the forenoon of said day, at the principal place of business of said Company, in the building where the Board of Directors of said Company usually meets, viz., at the office

of said Company, Number .... Street in the County of ....., in pursuance of the notice hereinafter set forth, and Abner Moxey, the Secretary of said Company and the Secretary of said meeting, and William Ross, A. L. Smith, John Russ, John D. Wasson, George Utley, Charles F. Hutton, Louis Jackson and Thomas Magnus, constituting a majority of the Directors of said Company, do hereby certify and declare as follows, viz.:

That at a regular meeting of the Board of Directors of the Market Street Railway Company, held at the office of said Company at Number .... Street, in the County of ..... on the 5th day of March, 1904, the following resolution was duly passed and adopted and entered upon the minutes of said Corporation, to wit:

"Whereas, it is the sense of the Directors of this Corporation that it should issue its Bonds to be secured by a mortgage or trust deed upon its railroad land, franchises, and all other property acquired, or to be acquired within the State of ....., for the sum of Seventeen Million and Five Hundred Thousand Dollars $17,500,000.00) for the purpose of raising money to complete the construction and equipment of the railroads of this Corporation within the County of .....

"NOW, THEREFORE, BE IT RESOLVED, that a meeting of the Stockholders of this Corporation be called for the purpose of creating a bonded indebtedness as hereinbefore specified, and that such meeting be held at the principal place of business of the Corporation, which is the building where the Board of Directors usually meets, namely: at No. .... Market Street, in the City of ....., in the County of ....., State of ....., at ten o'clock of the forenoon, on the 15th day of May, 1904; and the Secretary is hereby directed to give notice of said meeting to the Stockholders of this Corporation by publication in a newspaper, namely: The "....," published in the City of ....., County of ....., State of ....., at least once a week, for each week, until the 15th day of May, 1904, and in addition thereto, said

Secretary shall mail a notice to each of the Stockholders whose name appears on the books of said Corporation, sufficiently addressed to his place of residence, if known, and if not known, then at the principal place of business of said Corporation, and that each and all of said notices shall be mailed to such Stockholders at least thirty days before the day hereinbefore appointed for such meeting."

And that, in pursuance of said resolution a notice of which the following is a copy, to wit:

"NOTICE IS HEREBY GIVEN by Order of the Board of Directors of the Market Street Railway Company, that a meeting of the Stockholders of said Company has been called by said Board, to be held on the 15th day of May, 1904, at ten o'clock in the forenoon, at the principal place of business of said Company, at the building where the said Board of Directors usually meets, namely: at the office of said Company, Number .... Street, in the City of ....., County of ....., in the State of .....; that the object of said meeting is to consider and act upon the proposition that said Company create a bonded indebtedness of Seventeen Million, Five Hundred Thousand Dollars ($17,500,000) in Gold Coin of the United States, for the purpose of raising money to complete the construction and equipment of the railroads of this Corporation within the City of ....., and to purchase and pay for any other property within the purposes of said Company, and to secure the bonded indebtedness, so prepared to be created, by a mortgage or trust deed upon the railroad and railroad lines and other property of said Company now owned or hereafter to be acquired by said Company.

"By Order of the Board of Directors of The Market Street Railway Company.

"ABNER MOXEY,

(Corporate Seal.) "Secretary,

"The Market Street Railway Company."

was published as specified in said resolution calling said meeting, viz., in the "....." (which is a newspaper pub-

lished daily in the said City of ....., County of ....., aforesaid), at least once a week, for each week from the said 5th day of March, A. D. 1896, to the 15th day of May, A. D. 1904, in all respects as required by said resolution, and by law; and in addition to such notice by publication the Secretary of said Company, in pursuance of said resolution, addressed a notice to each of the Stockholders of said Corporation (all of whose names then appeared and now appear on the books of the Corporation), sufficiently addressed to their respective places of residence, all of such places of residence being then and now known, and mailed said respective notices to said respective stockholders, by depositing in the United States Post Office at said City of ....., envelopes containing said notices respectively each properly addressed to said respective stockholders and each with the proper postage prepaid thereon, more than thirty days before the said 15th day of May, A. D. 1904.

And we further certify and declare that at the time and place specified in said notice, to wit, on the 15th day of May, 1904, at ten o'clock in the forenoon of said day, at the principal place of business of said Company, in the building where the Board of Drectors of said Company usually meets, viz., at the office of said Company, Number .... Street, in said City of ....., all the Stockholders of said Company appeared in person or by proxy, and the following proceedings were had, viz.:

The meeting was duly called to order by Mr. John D. Wasson, and thereupon by the unanimous vote of all of said stockholders, present as aforesaid, said John D. Wasson was duly elected Chairman of said meeting, and he thereupon acted as Chairman of said meeting; and Mr. Abner Moxey was duly elected as Secretary of said meeting. Whereupon the said Chairman stated and fully explained the object of said meeting as specified in said notice, and thereupon the following resolution was duly moved by Mr. Thomas Magnus, and duly seconded by Mr. Louis Jackson.

"RESOLVED, That a bonded indebtedness of The Market Street Railway Company, to the amount of Seventeen

Million and Five Hundred Thousand Dollars, Gold Coin of the United States of the present standard of weight and fineness, be created for the purpose of constructing, acquiring, completing and equipping its railroad and railroad lines, and all else relative thereto, and of paying and discharging all debts and contracts incurred in or about such construction, completion, acquisition and equipment, and all else relative thereto, and for the purchase of property within the purposes of said corporation; and that such bonded indebtedness be represented by Seventeen Thousand Five Hundred bonds of said Company in the sum or denomination of One Thousand Dollars each, negotiable in form, payable on the first day of September, A. D. 1934; or, if default be made in the payment of any installment of interest on any of said bonds when the same shall be payable and payment thereof shall be demanded in writing, and such installment of interest shall remain unpaid for six months after such demand, the whole amount of the principal of said bonds shall become due and payable; said bonds to bear interest at the rate of five per cent. per annum, payable semi-annually, in said gold coin, above mentioned, on the first day of September and the first day of March each year, either at the office of said Company in the said City of ....., or at the office of its financial agency in the City of New York; and

"RESOLVED FURTHER, That such bonded indebtedness be secured by a deed of trust of the railroad and railroad lines of said Company, and all the franchises and rights of every kind and nature whatsoever which said Company now has, and which it may hereafter acquire; which deed of trust shall be to such trustee or trustees and with such provisions, and upon such terms and conditions, and under such regulations and restrictions, as the Board of Directors of the Company shall deem proper; and

"RESOLVED FURTHER, That the Board of Directors of the Company be and it is hereby authorized, empowered and directed to take any and all steps that it shall deem necessary or proper in or about the execution and delivery of said deed of trust."

And after discussion the said motion, so moved and sec-

onded as aforesaid, was duly put and was duly carried, and said resolution was duly passed and adopted by said meeting by the following vote:

VOTE UPON SAID RESOLUTION:

The following persons, viz., William Ross, A. L. Smith, John Russ, John D. Wasson, George Utley, Charles F. Hutton, Louis Jackson and Thomas Magnus, who were all present in person at said meeting and who then and there were, and for more than ten days next prior to said meeting had been *bona fide* joint owners in the aggregate of fifty-three thousand and seven hundred (53,700) shares of the capital stock of said Railway Company, and in whose joint names all of said fifty-three thousand and seven hundred shares then and there stood upon the books of said Company, and had so stood upon said books for more than ten days next prior to said meeting voted all of said shares in the affirmative and in favor of the passage and adoption of said resolution.

And Abraham Weiss, who then and there was, and for more than ten days next prior to said meeting had been, a *bona fide* owner and holder of fifty (50) shares of the capital stock of said Company, and in whose name all of said fifty shares then and there stood upon the books of the Company, and for more than ten days next prior to said meeting had so stood upon the books of said Company, and who was not present in person at said meeting but who was represented thereat by his attorney and proxy, Amos Deitz, voted all of said fifty shares, by and through his said attorney and proxy, Amos Deitz (who was present at said meeting), in the affirmative, and in favor of the passage and adoption of said resolution.

Said proxy from said Abraham Weiss, to said Amos Deitz, was in writing, duly executed by said Weiss, and filed with the Secretary, and was and is in the words and figures as follows:

"KNOW ALL MEN BY THESE PRESENTS that I, the undersigned, Abraham Weiss, a stockholder in The Market Street Railway Company, having stock in my own name upon the books of the Company have made, constituted and appointed, and by these presents do make, constitute and appoint

Amos Deitz my true and lawful attorney and proxy (with full power of substitution and revocation) for me and in my name, and in my place, and stead, and as my proxy, to vote all shares of stock standing in my name upon the books of said Company at a meeting of stock-holders of said Company to be held in the City of ....., on the 15th day of May, 1904, or at any adjournment thereof, and at any and all meetings whatsoever, upon the proposition stated in the notice of such meeting, and upon any modification, change or amendment thereof, and upon any and all propositions and questions whatsoever, whether stated or referred to in any notice of meeting or not, with all the powers I would have if personally present.

"Hereby ratifying and confirming whatever my attorney shall do in the matter.

"IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 10th day of May, 1904.

"ABRAHAM WEISS. (Seal.)

"Witness: A. R. KAMES."

The said stock of said stockholders above mentioned so represented at said meeting and voted in the affirmative and in favor of the passage and adoption of said resolution as aforesaid, constituted all of the subscribed capital stock of said corporation.

No shares of stock were voted in the negative or against the passage or adoption of said resolution.

Whereupon the Chairman declared that the owners and holders of all the subscribed capital stock of the corporation had voted in favor of the adoption of said resolution, and that the said resolution had been duly adopted by the vote of all the stockholders of the Company.

All of which appears of record upon the minutes of the meeting of the Board of Directors and of the stockholders of said corporation, as recorded and preserved in its records.

And we further certify and declare that by the proceedings aforesaid, a bonded indebtedness to the amount of Seventeen Million and Five Hundred Thousand ($17,500,000) Dollars in Gold Coin of the United States of the present standard of

weight and fineness has been created or authorized to be created, and that the creation of said bonded indebtedness was accomplished by the vote of all the subscribed capital stock of the Corporation.

And we further certify and declare that all of the said Stockholders of said Company were present at said meeting, either in person or by proxy as above stated, and consented upon the record of said meeting and to all the proceedings and doings thereat, which consent was as follows:

"We, the undersigned, being the holders of all of the subscribed capital stock of The Market Stret Railway Company, hereby consent to the meeting of stockholders of said Company called for the creation of a bonded indebtedness of said Company in the sum of Seventeen Million and Five Hundred Thousand Dollars in Gold Coin of the United States of the present standard of weight and fineness, and held at the office of the said Company, Number .... Street, in the City of ....., County of ....., on the 15th day of May, 1904, at ten o'clock in the forenoon of said day, hereby consent to said meeting and to all the proceedings and doings thereat.

"ABRAHAM WEISS, by AMOS DEITZ, Atty, Proxy.

"WILLIAM ROSS,	A. L. SMITH,
"JOHN RUSS,	JOHN D. WASSON,
"GEORGE UTLEY,	THOMAS MAGNUS,
"LOUIS JACKSON,	CHARLES F. HUTTON,

And we further certify and declare that the above signatures to said consent last above set forth are the genuine original signatures of said stockholders as they purport to be; and that said consent as recorded upon the books of said Company was and is also signed with the genuine original signature of all of said stockholders as above shown.

IN WITNESS WHEREOF, we have hereunto set our hands and caused the corporate seal of said Corporation to be hereunto affixed at the City of ....., County of

....., State of ....., this 15th day of May, 1904.

JOHN D. WASSON,
Chairman of the above mentioned meeting.

ABNER MOXEY,
Secretary of the above mentioned meeting.

WILLIAM ROSS,
A. L. SMITH,
JOHN RUSS,
GEORGE UTLEY,
(Corporate Seal.) JOHN D. WASSON,
CHARLES F. HUTTON,
LOUIS JACKSON,
THOMAS MAGNUS.

Directors of The Market Street Railway Company and constituting a majority of the Board of Directors of said Company.

Endorsed:

Filed in the office of the County Clerk of the County of ....., State of ....., this 31st day of May, A. D. 1904.

JOHN JENKINS,
County Clerk.
By SAM'L HOBBS,
Deputy Clerk.

CHAPTER XX.

Change of Name.

170. Two Methods Available, According to the Provisions of Statutes.
171. Proceedings in Court.

§ 170. Two Methods Available, According to the Provisions of Statute.

Where general laws exist for the creation of corporations, these usually also provide for changing the names of such corporations. A resort to the courts is necessary for this purpose. There is nothing peculiar in the preliminary proceedings.

To change the name of a corporation is a more troublesome matter, from a clerical and legal standpoint than the formation of a corporation. Action is required by the stockholders in the first instance, then by the directors on the proposition, and then usually a court proceeding has to be instituted and carried through to judgment. In a few States, however, a change of name is effected as any other amendment of the charter; that is to say, by merely carrying the proper resolutions through meetings of both the stockholders and Board of Directors, and filing certified copies thereof with the proper county and State officers. There is no material difference in the corporate proceedings, no matter which method is resorted to.

The resolution by stockholders may be passed as any other at a regular meeting, if, upon notice speci-

fying an intention to present such a proposition, or at a special meeting called and noticed for that particular purpose.

The resolution may be as follows:

Form 140.

.....

RESOLUTION BY STOCKHOLDERS FOR CHANGE OF NAME.

Whereas, another corporation having the same name as this corporation, previously incorporated under the laws of the State of ....., does business within this State, and in the immediate neighborhood with this Company; and whereas the name of this corporation may be changed without inconvenience to it, and will relieve both corporations of considerable annoyance and inconvenience;

Therefore, be it resolved, that the name of this corporation be changed from that of the "New Era Printing Company" to the "Belvidere Printing Company"; that the Board of Directors be and are hereby instructed to take such steps and institute such proceedings as shall be necessary to carry this resolution into effect.

.....

Form 141.

....

RESOLUTION BY BOARD OF DIRECTORS FOR CHANGE OF NAME.

Whereas, heretofore, to wit, on the 15th day of March, 1904, the stockholders of this corporation, in meeting duly and regularly assembled, unanimously passed a resolution reading as follows:

(Here insert as per Form 140.)

Now, therefore, be it resolved by the Board of Directors of said New Era Printing Company, that the instruction embodied in said resolution be carried into effect, and that the President and Secretary be, and they are hereby instructed

to employ counsel to institute and carry through to final judgment the proper proceedings to that end.

.....

§ 171. Proceedings in Court.

Form 142.

.....

PETITION FOR CHANGE OF NAME.

In the ..... Court, within and for the County of ....., State of .....

In the matter of the change of name of the New Era Printing Company, a corporation.

To the Honorable ..... Court of the County of ....., in the State of ....., sitting within and for the County of .....

Your petitioner, the New Era Printing Company, respectfully represents, alleges and prays as follows:

Alleges :—

That it is a corporation formed on the ..... day of ....., 190..., and originally filed its articles of incorporation in the office of the Clerk of the County of .....; that the same were duly recorded by him and that a certified copy thereof were, on the ..... day of ....., 190..., filed with the Secretary of the said State of ....., and were by him duly recorded.

That the present name of petitioner is the "New Era Printing Company." That for good and sufficient reasons set forth in a resolution unanimously passed and adopted by the stockholders of petitioner, namely, that another corporation having the same name had been, without the knowledge of the incorporators of petitioner, previously created under the laws of the State of ....., and is now engaged in the same business as petitioner in the same neighborhood of petitioner, causing great annoyance and inconvenience to both said corporations.

That such change of name will not injure or incon-

venience, or result in any loss to petitioner or to its stockholders.

That petitioner desires to change its name to the "Belvidere Printing Company." That no other corporation by that name has ever been created under or by virtue of the laws of this State, nor is any corporation by that name created or formed by the laws of any other State doing business within this State.

Wherefore, petitioner prays that its name be changed from the New Era Printing Company to the Belvidere Printing Company.

NEW ERA PRINTING COMPANY,
By E. P. Jones, M. L. Bennett,
James Willard, Asa Roberts,
and John Gordon.
Constituting a majority of its
Board of Directors.

DUBB & BUBB,
Attorneys for Petitioner.

(Verification by one of the Directors.)

.....

Form 143.

.....

ORDER SETTING DATE FOR HEARING AND FOR PUBLICATION OF NOTICE.

(Title of Court and Cause.)

Upon reading and filing the verified petition of the New Era Printing Company, praying for a decree changing its name, it is hereby ordered that the same be set for hearing on the ..... day of....., 1904, at 10 o'clock A. M., at the Court-room of this Court, in the Court House of the County of ....., in the City (or town) of .....; and that the Clerk give notice by publication, as required by law.

Dated .....day of ....., 1904.

.....

Judge of said Court.

.....

The published notice is simply the publication in a newspaper of a copy of the petition, with the endorsement of filing the same, immediately followed in the same notice, of a copy of the Court's order setting the matter for hearing and directing publication. As to the period of publication, the statutes must be consulted, as they vary in the different States.

Form 144.

.....

DECREE GRANTING CHANGE OF NAME.

(Title of Court and Cause.)

The above entitled proceeding coming on regularly to be heard on the ..... day of ....., 190...., evidence was introduced on behalf of said petitioner in support of its application for a change of name a hearing was duly and regularly had. No one appearing in opposition and there being no objection to such change of name, the matter was submitted to the Court for its decision.

And the Court being fully advised in the premises, finds as follows:

First—That each and every averment in the petition filed herein is true;

Second—That good reason has been shown to this Court for the change of petitioner's name to the Belvidere Printing Company;

Third—That a copy of said petition, and of the preliminry order of the Court theron was duly and properly published as required by law, and notice likewise given to all interested parties of the time and place of hearing said petition;

Fourth—That the Court has jurisdiction of the subject matter of said application, and is authorized and empowered to hear and grant the same;

Wherefore, it is ordered, adjudged and decreed that the

said application of the New Era Printing Company, a corporation, be, and the same is granted, and that its name be, and the same is hereby changed to Belvidere Printing Company.

Dated ..... day of ....., 190.....

.....

Judge of said Court.

.....

CHAPTER XXI.

Consolidation of Corporations.

172. Of the Principles Involved in and Results Attained by Consolidation.
173. Of the Proceedings to Consolidate.
174. Rights of Creditors upon Consolidation Further Considered.

§172. Of the Principles Involved in, and Results Attained By, Consolidation.

The new corporation formed by a consolidation of two or more subsisting corporations may claim existence and may exist for the full period allowed to corporations generally by the statutes of the State where the consolidation is effected. Its term of existence is not curtailed by the fact that any constituent corporation was created for a shorter period, or that part of its original term of existence had expired.[1]

The authorities to the effect that upon a consolidation the resulting entity is a new corporation are numerous, emanating from the courts of many States.

In a certain sense, the consolidation of two or more corporations works a dissolution of both. It transfers their existence into that of the new corporation and suspends all their rights and powers as distinct entities.

But the fiction of continuing corporate existence preserves the rights of creditors who have commenced

actions at law, at least to the extent that such actions do not abate, though it may be necessary, in order to bind the property of the corporation formed by the consolidation to substitute it as a party defendant.[2]

Nor can a consolidation be given the effect to deprive creditors of their recourse against the original corporation debtor. The new corporation receives its property charged with a trust which courts will enforce upon equitable principles.[3]

In a majority of the States are found statutes authorizing the consolidation of two or more railroad corporations, and, in a few, the power to consolidate is conferred upon certain other classes of corporations. The method, as well as the rights and powers of the new corporation thus created are defined by the same statutes in more or less detail. The procedure thus prescribed must be strictly pursued, as well to the end that the new corporate organization be free from defects as that creditors and stockholders of the original corporations may be bound by it.

Without exception, the consent of a proportion of the stockholders of each consolidating corporation must be previously obtained, usually two-thirds, but in some States, three-fourths; in others the consent of a bare majority suffices.

The directors may, preliminarily to calling upon the stockholders to act, carry on the negotiations, formulate all the plans and agree upon all the terms of the consolidation. It would usually be impracticable for the stockholders to do this. Their rights are fully protected if the scheme of consolidation be

laid before them at a meeting, or in writing, in all its details, and they be thus given an oppuortunity to understand just what is proposed.

Under statutory authority for two or more railroad companies, two or more turnpike companies, two or more mining companies, etc., to consolidate, there can be no consolidation of those belonging to different classes.

But the procedure is almost or quite the same, no mater what class includes the consolidating companies; and the procedure and forms for the consolidation of railroad companies which follows are easily adaptable, whatever the class which it is desired to consolidate.

§ 173. Of the Proceedings to Consolidate.

We will suppose that the Directors of the Market Street Railway Company have negotiated with the Directors of the Chestnut Street Railway Company and the High Street Railway Company, all incorporated under general laws of the same State, and the three Boards have come to an oral agreement to consolidate the three corporations, and upon all the terms of the consolidation, and there is an understanding between the Boards with the requisite proportion of stockholders of each corporation. The next step is to place the whole matter in proper and legal form and to consummate the new corporate creation to result from the consolidation.

With the above explanation, the following forms will be understood:

Form 145.

RESOLUTION OF CONSOLIDATION TO BE PASSED BY EACH BOARD OF DIRECTORS.

Whereas, the Market Street Railway Company, the Chestnut Railway Company, and the High Street Railway Company desire, and have proposed, to consolidate and amalgamate their respective capital stocks, debts, properties, assets and franchises of each other, and of this company.

And Whereas, it is the sense of this Board that such consolidation and amalgamation will be mutually advantageous.

And Whereas, the respective Boards of Directors of said corporations have proposed such consolidation and amalgamation of their capital stocks, debts, properties, assets and franchises, with each other and with this company, upon the terms following, to wit:

First. That the said consolidation and amalgamation shall be made at once and that the name and style of said consolidation and amalgamated corporation shall be the "Market Street Railway Company;" that it shall continue in existence for a period of fifty years from the date of the articles of consolidation, amalgamation and incorporation.

Second. That the several capital stocks, debts, properties, assets and franchises held, owned or possessed by each of said corporations shall be vested in said consolidated and amalgamated corporation, the Market Street Railway Company, as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all the conditions, stipulations, contracts, liens, claims and charges thereon, and to all debts and obligations of said respective corporations and said consolidated and amalgamated corporations shall fully complete, carry out and perform all valid conditions, stipulations and contracts heretofore made by, and shall pay and discharge all liens, claims and charges heretofore created or suffered by, any of said corporations on their respective properties, and shall pay and discharge all

valid debts and obligations of every kind, character and description heretofore incurred or assumed by or now existing against any of said corporations.

Third. That the objects, the purposes, the capital stock, the Board of Directors, and the principal place of business shall be as expressed in the articles of consolidation, amalgamation and incorporation hereinafter set forth.

Fourth. That the several stockholders of each of said corporations shall have issued to them such a number of shares of the consolidated corporation out of the shares thereof hereinafter allotted to the stockholders of their respective corporations, and shall bear the same proportion to the total number of shares so allotted, as the number of shares held by such stockholders in their respective corporations shall bear to the whole issued and outstanding capital stock thereof.

Fifth. That the entre capital stock of the consolidated corporation, consisting of fifteen thousand shares, the same being the aggregate number of shares held by the stockholders of said three corporations shall be distributed as follows:

	Shares.
To the shareholders of the said Market Street Railway Company	6,000
To the stockholders of each of the other two consolidating companies	4,500

And whereas, the holders of more than three-fourths in value of all the capital stock of this and each of the aforesaid corporations have given written consent to such consolidation and amalgamation.

Now, therefore, be it resolved that the propositions hereinbefore recited be, and they are hereby accepted, and it is agreed that this company consolidate and amalgamate with the said (naming the other two companies).

Resolved, Further, That the President and Secretary of this Company be, and they are hereby authorized, empowered and directed to execute on behalf of this Company and under

its corporate seal, articles of consolidation, amalgamation and incorporation, in words and figures following, to wit:

(Here insert the proposed articles of consolidation and incorporation, the same being Form 146.)

.....

Articles of consolidation and incorporation are, in some respects, very similar to ordinary articles of incorporation; in others, very dissimilar, and may be as follows:

Form 146.

.....

Articles of Consolidation and Incorporation
of the
MARKET STREET RAILWAY COMPANY,
CHESTNUT STREET RAILWAY COMPANY,
and
HIGH STREET RAILWAY COMPANY.

Articles made and executed on the 1st day of May, 1904, by and between the Market Street Railway Company, party of the first part, the Chestnut Street Railway Company, party of the second part, and the High Street Railway Company, party of the third part; all of said parties being railroad corporations duly organized and existing under the laws of the State of ....., and having their respective principal places of business in the City of ....., in said State.

Witnesseth, that Whereas, The said party of the first part, the Market Street Railway Company, is the owner of certain street railways in the streets of, and within, the corporate limits of the aforesaid City and State, more particularly described as follows: Commencing, etc., (here specify particularly the point of commencement, route and termini of each and every line owned and operated). The total length of said railways being, as estimated, ... miles; and also of all rights, franchises and privileges granted in respect of, and in connection with, said railways. And the said party of the first part, the Market Street Railway Company, is also

the owner of certain rights, franchises and privileges for the construction, maintainance and operation of street railways in the streets and within the corporate limits of said City more particularly described as follows, to wit: Commencing, etc., (here insert a particular description of point of commencement, route and termini of franchises granted, but not built upon or improved).

And Whereas, said party of the second part, the Chestnut Street Railway Company is the owner, etc., (here describe its properties in the same form as of the Market Street Railway Company. Follow it with a like paragraph as this as to the High Street Railway Company, the party of the third part) :

And Whereas, Said parties, and all of them, now are, and ever since their organization and incorparation have been, railroad corporations duly and lawfully organized and existing as such, under the laws of the State of..... ....., relating to the formation and existence of railroad corporations.

And Whereas, The said respective parties believe that a consolidation and amalgamation of their capital stocks, their debts, properties, assets and franchises, will be mutually advantageous.

And Whereas, The respective Boards of Directors of said corporations parties hereto, have agreed upon the consolidation and amalgamation of said corporations, their capital stocks, debts, properties, assets and franchises in the following manner, to wit :

First. That the said consolidation and amalgamation shall be made at once, and that the name and style of the consolidated and amalgamated corporation shall be "Market Street Railway Company." That it shall continue in existence for a period of fifty years from the date of these articles.

Second. That the several capital stocks, debts, properties, assets and franchises held, owned or possessed by each of said corporations shall be vested in said consolidated and amalgamated corporation, the Market Street Railway Company, as fully as the same are now severally held and en-

joyed by them respectively, subject, however, to all the conditions, stipulations, contracts, liens, claims and charges thereon, and to all debts and obligations of said respective corporation; and said consolidated and amalgamated corporation shall fully complete, carry out, and perform all valid conditions, stipulations and contracts heretofore made by and shall pay and discharge all liens, claims and charges heretofore created or suffered by any of said corporations on their respective properties and shall pay and discharge all valid debts and obligations of every kind, character and description incurred or assumed by or now existing against any of said corporations.

Third. That the objects, the purposes, the capital stock, the Board of Directors, and the principal place of business shall be as expressed in the articles of consolidation, amalgamation and incorporation hereinafter set forth.

Fourth. That the stockholders of each of said corporations, parties hereto, shall have issued to them the number of shares of the capital stock of the consolidated and amalgamated corporation which the Board of Directors of the corporations, parties hereto, have allotted to such stockholders respectively, upon the surrender of the certificates of stock held by said stockholders in said corporations respectively.

And Whereas, the holders of more than three-fourths in value of all the capital stock of, and issued by, each of said respective Boards of Directors, and for the purposes expressed in the Articles of Consolidation, Amalgamation and Incorporation following:

Now, therefore, know all men by these presents, that the parties hereto, in pursuance of the laws of the State of ....., in such cases made and provided, do hereby consolidate and amalgamate their capital stocks, debts, properties, assets and franchises for the uses and purposes aforesaid, and do hereby vest the same in the said consolidated and amalgamated corporation, the Market Street Railway Company, and in pursuance of said consolidation and amalgamation, and in order to more fully carry the same into force and effect,

do hereby adopt the following articles of Consolidation, Amalgamation and Incorporation.

I.

The name of said consolidated and amalgamated corporation shall be Market Street Railway Company.

II.

The objects nd purposes of said consolidated and amalgamated corporation are as follows, to wit:

(Then follow the purposes as in original articles by which a street railway corporation is formed with respective routes. covering the entire ground separately covered by all the three companies prior to consolidation.)

The total length of railroads, as estimated, is ..... miles (giving the aggregate mileage of the three companies) or thereabouts. Also along and upon other parts of the same or any other streets, alleys, highways, roads, or lands of said City.

(The third, fourth, fifth and sixth paragraphs are the same as in the articles of other incorporations.)

VII.

The amount of capital stock which was actually subscribed in each of said corporations, parties hereto, at the time of their formation, and the names of the persons by whom the same were subscribed, and the number of shares subscribed by and then held by each, was as set forth in the original articles of incorporation of the several companies now consolidated and amalgamated and the same was, and now is, more than one thousand dollars per mile of the estimated length of the several railroads mentioned and described in the said respective Articles of Incorporation.

VIII.

That of the Capital stock of each of said corporations had, at the time of their formation, (where the same was required by law) been actually paid to the respective treasurers thereof, the amounts specified in their original Articles of Incorporation verified by the affidavits filed in the office of Secretary of the State of ....., and the amount so paid in were in each case ..... per cent. of the subscribed capital stock.

IX.

The amount of the capital stock of the said corporations which has been subscribed and actually paid in exceeds the amount of One Thousand Dollars per mile of the entire length of the said railroad, as estimated and as stated and as set forth in Article II hereof.

In witness whereof, the said parties have caused these presents to be signed by their respective presidents and secretaries and their corporate seals to be hereunto affixed, pursuant to resolutions of their respective Boards of Directors, this 20th day of May, 1904.

MARKET STREET RAILWAY COMPANY,
By H. L. DEMOREST,
President.
(Corporate Seal.) J. B. MOULTON,
Secretary.

CHESTNUT STREET RAILWAY COMPANY,
By A. D. WARREN,
President.
(Corporate Seal.) GEO. L. SANSOME,
Secretary.

HIGH STREET RAILWAY COMPANY,
By JOSEPH THAYER,
President.
(Corporate Seal.) H. L. BURNS,
Secretary.

(Acknowledgments of each and all of those signing.)

.....

The writen assents of stockholders of each of the respective consolidating companies to a consolidation, mentioned in the above resolution by the Board of Directors, (Form 145), may be as follows:

Form 147.

.....

This is to certify that we, the undersigned, being holders of more than two-thirds in par value of all stocks of the Market Street Railway Company, do hereby assent to the con-

solidation of the capital stock, debts, properties, assets and franchises of the Market Street Railway Company, Chestnut Street Railway Company and High Street Railway Company, in such manner as may be agreed upon by the respective Boards of Directors of said Companies.

Done this 1st day of May, 1904.

H. L. Demorest.....2,000 shares.
J. F. Moulton ..... 500 shares.
C. W. Black .....1,000 shares.
Evan Holcomb .....1,000 shares.
D. F. Lincoln ..... 500 shares.

.....

The stockholders of each of the other consolidating companies will sign an assent in the same form.

Form 148.

.....

NOTICE AFTER CONSOLIDATION.

(Required by statute to be published.)

Pursuant to the statute in such case made and provided, notice is hereby given that the Market Street Railway Company, the Chestnut Street Railway Company and the High Street Railway Company, upon the written consent of the Stockholders holding more than two-thirds in par value of all the stock of each of said corporations respectively, and by agreement of the respective Boards of Directors of said corporations made and entered into in accordance with such consent, and pursuant to the statute in such case made and provided, have consolidated their capital stocks, debts, properties, assets and franchises, under the corporate name and style of the Market Street Railway Company.

Done at ....., the 30th day of May, 1904, by order of the Board of Directors of the Market Street Railway Company.

J. F. MOULTON,
Secretary.

.....

As an additional safeguard against oversight or defect in the proceedings, the consolidated company often calls a meeting of all the stockholders of the constituent companies, at which meeting a resolution ratifying the consolidation may be offered for adoption.

All the proceedings are required by statutes to be made matter of public record by the filing of the articles of consolidation and incorporation with designated County and State officers. The procedure to this end, and to the end of securing the proper certificate from the Secretary of State, or other designated State officer, is the same as with respect to original articles of incorporation.

The above diffuse and extended form is usually adopted for the sake of greater security and in order to impart definite and exact information where great financial interests are at stake and it is desired to inspire confidence in the minds of investors in the stocks and bonds of the consolidated company. In cases of corporations whose securities are held by but few individuals and whose operations are of but small range, a shorter form of resolution to be adopted by the stockholders of each company will suffice.

Sometimes it is desirable that the consent go somewhat more into detail. The consent may be given by resolution at a meeting of stockholders, if that method be preferred.

The following is a sufficient form for such resolutions :

Form 149.

.....

Whereas, the business of the New Lead Mining Company and the Sand Bar Mining Company is practically the same and their purposes similar;

And whereas, the true interests of this corporation, the ..... Company, and of all its stockholders, will be promoted by the greater economy in management and development secured by consolidating their properties and capital stock, thus securing a union of capital and effort, and issuing the stock of the new corporation in exchange for and in lieu of the stock of each of the consolidating companies, share and share alike;

Now, therefore, be it resolved: that the Board of Directors of this corporation be, and they are hereby authorized, directed and empowered to sell, convey by good and sufficient conveyances, in fee simple, to the new corporation, resulting from said consolidation as soon as the same is organized, the following described real estate of this Company:

(Here insert description.)

Also the personal property of this corporation of every kind and description.

And be it further resolved, that the stockholders of this corporation do hereby consent to each and all the matter hereinabove set forth, and hereby ratify and confirm the same, and whatsoever the Board of Directors of this Company shall lawfully do in the premises.

.....

The other proceedings may be simplified and abbreviated in the same manner and proportion.

§ 174. Rights of Creditors Upon Consolidation Further Considered.

Duties which a corporation owes to parties who have dealt with it previous to a consolidation, and obligations it has incurred to such parties under con-

tracts cannot be transferred to the new corporation without their consent.[4]

It is not to be understood from this that a creditor nay prevent a consolidation of a corporation which happens to be indebted to him with another, but he may insist that its property remain subject to his demands and that its stockholders shall be answerable to him to the extent of their statutory liability. Still the creditor may release the debtor corporation by accepting in lieu of it the consolidated corporation, thus effecting a substitutional novation.

In some of the States there are statutes broad enough to create a primary liability upon consolidated corporations for the liabilities of the several constitutional companies.

---

[1] Market St. Ry. Co. v. Hellman, 109 Cal. 571; Maine Centr. R. R. Co. v. Maine, 96 U. S. 499

[2] East Tenn. etc., R. R. Co. v. Evans, 6 Heisk. (Tenn.) 407.

[3] Railroad Co. v. Howard, 7 Wall. (U. S.) 392; Marshall v. Western, etc., R. Co., 92 N. C. 322; Van Glahn v. De Rosset, 81 N. C. 467; Agricultural Society v. Hunter, 110 Ill. 155.

[4] Bruffett v. Great Western R. R. Co., 25 Ill. 353; New Jersey Midland Ry. Co. v. Strait, 35 N. J. L. 322.

CHAPTER XXII.

Disposal and Leasing of Corporate Property.

175. General Principles Governing Herein.
176. Consolidation of Properties of Two or More Corporations.
177. Appointment and Authorization of Agent to Sell Specific Property.
178. Authorization to Accept Delivery or Conveyance, and Make Payment.
179. Resolution Authorizing Lease of Property.
180. Authorization to Reconvey Property and Satisfy Trust.

§ 175. General Principles Governing Herein.

In nearly or quite all of the States are statutes prohibiting the impairment of the capital stock of corporations. Such statutes may not be violated indirectly any more than they can be directly evaded.

In many ways has it been sought to evade such prohibitions, but never successfully when brought before the courts for review.

The transfer by a subsisting corporation of all its property and assets of every kind to another corporation, in sole consideration of the issuance of the stock of the latter to the stockholders of the former, is, in effect, an attempted distribution to them of all the property and assets of the corporation, making such transfer, and a violation of statutory law.[1]

After a corporation has become actually insolvent, whether its insolvency has been judicially declared or not, all its assets become a trust fund, in the strict sense of the term. No stockholder, then, can be per-

mitted to participate in a distribution of its funds, by subrogation or otherwise.[2]

Whatever the moral view of the question of giving a preference in payment or security to one creditor over another, there is no doubt that a corporation has the same rights in this respect as an individual.[3]

§ 176. Consolidation of Properties of Two or More Corporations.

A resolution authorizing a consolidation of properties is almost the equivalent of one authorizing a consolidation of the corporate owners of the properties, but differs in the respect that no new corporation is created; both corporations continue their existence; there is no change of shares, and both, with separate officers, may continue to transact business. Such resolution may be simply an authorization for the sale and transfer of property. Sometimes, however, it may contemplate the going out of business of one of the corporations and the exchange of all its property for stock in another. In that case the resolution may be as follows:

Form 150.

.....

Be is resolved by the Stockholders of the New Lead Mining Company, in meeting assembled, that the Board of Directors of said corporation be, and they are hereby specially authorized and directed to sell, and by sufficient and suitable instruments to convey in fee simple all the real estate of said New Lead Mining Company, and every interest therein and right pertaining thereto, in fee simple, to the Sand Bar Mining Company, a corporation; also to sell and deliver to

the said Sand Bar Mining Company all the personal property of the said New Lead Mining Company; and we, the said stockholders hereby consent to each and all of the matters hereinabove set forth, and hereby ratify and confirm the same, and all else that said Board of Directors shall lawfully do in the premises.

.....

The last form may be preceded by "whereases," but is sufficient without them, the whereases being merely an argument, except where they perform the office of setting forth essential facts and due performance of legal conditions.

§ 177. Appointment and Authorization of Agent to Sell Specific Property.

Such resolution as is embodied in the last preceding section, Form 150, is easily adaptable to all kinds of sales and conveyances of property, whether the Board of Directors be directed to sell generally, or to a single corporation or individual. But, in case it is designed to authorize a sale of specific property, when a disposition of all the corporate property is not contemplated, there should be an accurate description of the same, whether it be personal, real, or of both kinds. The Board of Directors being thus empowered, or having the power without such a resolution by the stockholders, could appoint an agent or one or more officers to make the sale, or exchange and conveyance. The following form authorizes the President and Secretary to exercise the power of the Board therein:

Form 151.

.....

Be it resolved that the President and Secretary of the corporation be, and they are hereby authorized and directed, jointly but not severally, to sell for the best price, or on the best terms, available all that portion of the real estate of this corporation described as follows:

(Here insert description.)

Also the following described personal property: (Specify.)

And they are jointly further directed and authorized to receive and accept for all or any parcel or article of said property, payment in money, or property, and to consummate all such sales by delivery of personal property and executing and delivering good and sufficient conveyances under their hands and the seal of this corporation.

.....

§ 178. Authorization to Accept Delivery or Conveyance and Make Payment.

Authority to accept delivery and conveyance of property, and upon such delivery or conveyance to make payment therefor at a specified price, is in legal effect authority to purchase property, and may be in the following form :

Form 152.

.....

Whereas, on the 1st day of March, 1904, the Cross-town Street Railway Company, a corporation organized and existing under the laws of the State of ....., by its Board of Directors, offered to this corporation that certain real estate situate lying and being in the City of ....., State of ....., described as follows: (Here insert description); also ten of its first mortgage bonds of $1,000 each, bearing interest at five per cent, for the aggregate sum of $25,000, and it being deemed to the interest of this corporation that said offer be accepted;

Therefore, be it resolved, by the Board of Directors of the Enterprise Investment Company, that it purchase and accept conveyance and delivery from said Cross-town Street Railway Company, the above described real and personal property, and all instruments duly executed which are, or may be, necessary for the transfer thereof to this corporation. And the President and Secretary of this corporation are hereby authorized and directed to purchase and accept delivery of said personal property and all such good and sufficient conveyances and instruments in writing, properly executed, conveying and transferring said real property to this corporation; and they are hereby also directed and authorized upon receipt of said conveyances and instruments, and said personal property, to pay to the said Cross-town Street Railway Company, or to its agent duly authorized, said sum of Twenty-five Thousand ($25,000) Dollars, Gold Coin of the United States, of the moneys and funds of this corporation, in full payment and settlement therefor.

.....

§ 179. Resolution Authorizing Lease of Property.

The terms upon which leases of corporate property are made are of almost infinite variety, and the terms of the resolution should, of course, conform to those of the agreement which precedes it and the formal lease.

The following form contemplates a lease of mining property :

Form 153.

.....

Resolved that this corporation, the New Lead Mining Company, lease to the Sand Bar Mining Company, a corporation organized and existing under the laws of the State of ....., for the term of twenty years from and after the 1st day of June, 1904, all of its real estate, mining claims, plant, and appurtenances situate in the County of .....,

in the State of ..... Said real estate, mining claims and appurtenances are as follows: (Here insert description.)

And said plant consists of machinery and appliances for working and developing said mining claims, attached to the soil, specifically described as follows: (Here specify).

The yearly rental for all said property above described, real and personal, shall be $5,000, payable in quarterly installments of $1,250 each. And said lease shall impose upon the said Sand Bar Mining Company the following terms and conditions, to wit: It shall, at its own cost and expense, use, operate and keep in good repair all of said property, etc., (inserting all the undertakings on the part of the lessee.)

And the President and Secretary of this corporation, jointly, are hereby authorized and directed on behalf of this corporation, in its name, and under its seal, to make, execute, acknowledge and deliver an instrument in writing, leasing said property to the said Sand Bar Mining Company for the term of twenty years upon the terms as to rent, and subject to the covenants, undertakings and conditions above set forth.

.....

For a lease of mining property, see Form 174.

§ 180. Authorization to Re-Convey Property and Satisfy Trust.

Where a corporation holds a conveyance of property to secure an indebtedness to itself, or in trust to secure an indebtedness to a third party, it becomes necessary, upon satisfaction of the indebtedness, to reconvey to the grantee. The Board of Directors usually authorizes an officer or agent to re-convey the property. Such authority may be given by a resolution by the Board in the following form :

Form 154.

.....

Whereas, the Clearwater Ditch Company, a corporation duly organized and existing under the laws of the State of ....., did on the 1st day of March, 1903, execute, acknowledge and deliver to this corporation a deed of trust to secure the payment to it of the sum of Ten Thousand ($10,000) Dollars and the interest thereon, all of which fully appears from said deed of trust of record in the office of the County Recorder of the County of ....., State of ....., in Book .... of Deeds of Trust, at page .... thereof, by which deed of trust there was conveyed to this corporation the following described real estate, to wit: (Here insert description.)

And whereas, the said note mentioned in said deed of trust has been fully paid, together with the interest thereon to date, and the said Clearwater Ditch Company having requested a reconveyance of the property conveyed by said deed of trust, and having satisfied all charges and claims to remuneration of this corporation as such trustee, and the trust created by said deed having been fully satisfied; now, therefore, be it

Resolved, That this corporation, the Enterprise Investment Company, reconvey to the Clearwater Ditch Company, a corporation, by deed, grant, bargain and sale in due form, all of the property conveyed by said deed of trust, and hereinbefore referred to, which deed was heretofore duly accepted by this corporation, and that the trust created by said deed be declared fully satisfied and discharged; and that ....., the President, and ....., the Secretary of this corporation, be and they are hereby authorized, empowered and directed, for, on behalf of, and in the name of this corporation, to execute, acknowledge and deliver to said Clearwater Ditch Company, a deed of, grant, bargain and sale in due form, conveying to it all of said property described in said deed of trust to be fully satisfied.

.....

[1] Schoake v. Eagle Automatic Can Co., 135 Cal. 472.
[2] Sacramento Bank v. Pacific Bank, 124 Cal. 147.
[3] Welch v. Sargent, 127 Cal. 72.

CHAPTER XXIII.

Miscellaneous Resolutions, Contracts and Writings,

181. Signature and Authentication.
182. Authorization to President and Secretary to Borrow Money and Secure Re-payment Thereof.
183. Resolution Rescinding Contract.
184. Powers of Attorney.
185. Treasurer's Bond.
186. Indemnity Bond Where Certificate Lost or Stolen upon Issue of New Certificate.
187. Bonds Issued to Represent Corporate Indebtedness.
188. Acknowledgments and Verifications.
189. The Testimonium Clause.
190. Receipts, Drafts, Checks and Promissory Notes.
190. Receipts, Drafts, Checks and Promissory Notes.
191. Prospectuses.
192. Various Instruments Often Used by, but Not Peculiar to, Corporations.

§ 181. Signature and Authentication.

The question of how the various writings by corporate officers should be authenticated and signed would appear upon first impression very simple; and yet much litigation has arisen from time to time, in which the only, or principal, issue was as to whether a particular method or form of signature bound the corporation as principal or rendered the particular officer or agent who wrote the signature the real principal in the transaction, without the corporation becoming a party to it.

But one general rule governs herein and should

be conformed to. It is the same as that which governs where an individual is represented by an agent. The signature should be such as to leave no doubt of the capacity and relation held by the person signing, and should clearly disclose the name of the principal to which that relation is held. It is true that the body of the instrument may be looked to for a determination of the question, but it is much better and just as easy to travel the path of peace and safety.

In all important affairs of the corporation, not in the usual course of its business, or not falling distinctly and peculiarly within the department presided over by any officer, an explicit form of signature should be used showing the principalship of the corporation and the agency of the person affixing the signature. Where, however, a transaction falls naturally within the department of business usually attended to by an officer, it will be sufficient if he merely sign his name, followed by his official designation.

In much of the routine business of every corporation done in writing, paper having the name of the corporation printed thereon is used, and the official signature in coniection with the printed name of the corporation sufficiently indicates that it is a corporate, and not an individual, matter. The simplest form of the official signature would be:

"James Willard,
President."

This is sufficient for letters, informal notices, and the like, or the signature might be, "James Willard, President, New Era Printing Company." But in all

cases where it is important that the corporation should be expressly bound, and where there is room for the possibility of doubt, whether it was intended to incur a corporate or assume an individual liability, the correct corporate signature should be attached. It is in this form :

"New Era Printing Company,
By James Willard,
President."

For a small sum a rubber stamp, containing the whole signature, may be had with merely the name of the particular officer left blank. Each officer whose signature is often required should be supplied with such a stamp. Many corporate instruments, either from custom or usage, or because of special requirements of resolutions passed by the Board of Directors require the signatures of both the President and Secretary. The full corporate signature in those cases would be:

"New Era Printing Company,
By James Willard,
President,
J. F. Weston,
(Corporate Seal.) Secretary."

Where the President is specially designated to sign the corporate name and affix its seal, the Secretary attests the seal thus :

New Era Printing Company,
By James Willard,
(Corporate Seal.) President.
Attest : J. F. Weston, Secretary.

§ 182. Authorization to President and Secretary to Borrow Money and Secure Re-Payment Thereof.

Form 155.

.....

Be it resolved that this corporation, the New Era Printing Company, borrow from the Safe and Security Bank, Ten Thousand Dollars, to be repaid within one year with interest at seven per cent per annum until paid, interest to be made in United States Gold Coin.

That this corporation secure the payment of its said promissory note by a delivery to Josiah Sigismond, President of said Safe and Security Bank, in pledge, twenty first mortgage bonds of the Cross-town Street Railway Company, of the face value of $1,000 each, now the property, and in the possession of this corporation; that the said Josiah Sigismond, President of said Bank, be, in writing, appointed and constituted the attorney of this corporation, irrevocably, with power of substitution and revocation, to sell, at any time after said note or interest or any part thereof, is due, without previous demand, and with or without notice, the whole or any part of said lands, at either public or private sale, at his discretion, and deliver the same to the purchaser thereof, in case of the nonpayment of the said promissory note or the interest thereon, when due, and in such case, the proceeds of such sale to be applied to the payment of said debt, interest thereon, and all expenses or costs incurred, or paid by the said Safe and Security Bank, or by its President, the said Josiah Sigismond, the surplus, if any, to be held and paid to the order of this corporation.

And the President and Secretary of this corporation jointly, are hereby authorized and directed, in its name and under its corporate seal, to execute its promissory note to said Safe and Security Bank for said sum of Ten Thousand ($10,000) Dollars, and to deliver said bonds in pledge, upon the terms and conditions in this resolution specified, and an agreement and power of attorney in the usual form required in such cases by the said Safe and Security Bank, and to do

any and all other acts and things necessary to carry into effect the purpose and intent of this resolution.

.....

Attached to the note and power of attorney described in the last preceding form should be a certified copy of the resolution, and the other matters pertaining to its adoption, entry, etc., as follows :

Form 156.

.....

I hereby certify that at a regular meeting of the Board of Directors of the New Era Printing Company, held at the office of said corporation on the 1st day of March, 1904, at the hour of 10 o'clock A. M., called and conducted according to the by-laws of said corporation, upon due, legal and timely notice, a quorum of said Board being present and voting thereon, it was moved, seconded and unanimously resolved as follows: (Here insert the resolution.)

That the proceedings of said meeting pertaining to the adoption of said resolution, including the said resolution, have been duly entered in the Minute Book of Directors' meetings of said corporation and attested by the President and Secretary thereof; that the same has never been revoked, but remains in full force and effect; that the undersigned was, at the date of said meetings, and now is the duly elected, qualified and acting Secretary of said corporation, and that the authority conferred by said resolution upon the President and Secretary of said corporation has not been heretofore exercised, and that no money has been heretofore borrowed pursuant thereto.

J. F. WESTON,
Secretary.

Dated May 10, 1904.

.....

§ 183. Resolution Rescinding Contract.

Corporations possess the same power to modify or rescind existing contracts by mutual consent of the

parties thereto, that natural persons have. A resolution proposing to resind an agreement may be as follows :

Form 157.

.....

Be it resolved that this corporation, New Lead Mining Company, propose to the Sand Bar Mining Company, a corporation organized and existing under the laws of the State of ....., that the contract made by and between the above named corporations, as party of the first part and party of the second part respectively, under date of January 15th, 1903, be surrendered, abregated and rescinded, from and after said rescission, and that, in lieu thereof, this corporation execute and deliver to the said Sand Bar Mining Company a new contract, to take effect from the date of its execution and delivery, and containing such other, new, and additional terms as said corporations shall, after a conference between their respective agents, duly authorized, mutually agree upon; and the President and Secretary of this Corporation, (or .... and ....., constituting a committee to represent this Board) be and they are hereby authorized and directed to enter into negotiations with the Board of Directors, or any duly authorized committee of the Board of Directors of the said Sand Bar Mining Company, or with any agent of said corporation, duly appointed and authorized by it, on behalf of said corporation, and upon such terms as they deem expedient, just and proper, rescind said former contract and make a new one; and the said President and Secretary (or the said committee), are hereby given as full power and authority in the premises as if this Board of Directors were present, acting in its capacity, name and right as such; and they are hereby authorized and directed to execute and deliver in the name of and on behalf of this corporation, and under its corporate seal, all such necessary and proper instruments as may be necessary to carry out in full the purpose and intent of this resolution.

.....

§ 184. Powers of Attorney.

The power of attorney is a formal instrument granting authority from a principal to an agent named in the instrument to do a particular thing in the name and on behalf of the principal. There is no limit to the power to thus confer authority except that which applies to the principal; anl in the case of corporations, the Board of Directors may appoint an agent to do any act which the Board itself has power and capacity to perform, except where a statute, or by-law, the articles or charter specially designates the Board, or a particular officer or agent

Even where the act comes within the ordinary scope of a particular officer's duties, it is often deemed best to formally and specially authorize him by resolution of the Board in order to forestall any question which might be raised as to his authority in the particular instance. Such resolution is in legal effect a power of attorney, and, when properly certified by the Secretary, may be used as such.

But usually when one not a corporate officer is appointed, the resolution closes with a clause directing the President, or the President and Secretary, to execute and deliver a power of attorney as a separate instrument. In such cases a certified copy of the resolution authorizing the appointment should be delivered with the power of attorney. These together constitute conclusive proof of the agent's authority.

The following form will be found useful for the pur-

poses therein named, and may be easily adapted to other purposes:

Form 158.

.....

Know all men by these presents, that the New Era Printing Company, a corporation duly organized and existing by virtue of the laws of the State of ....., has made, constituted and appointed, and by these presents does make, constitute and appoint John Goode of the City of Washington, District of Columbia, its true and lawful attorney, for it, and in its name, place and stead, to grant, bargain and sell for such consideration and on such terms as he may approve, and as a whole, or in divisions and subdivisions, that certain tract or parcel of land owned by said corporation in the City of Washington, District of Columbia, described as follows: (Here insert description as in a deed of bargain and sale.); and the said corporation grants to its said attorney full power and authority to give leases upon and to collect and receive for said company all rents, derived from said property in any way from the date of this instrument until he shall find a purchaser therefor; and for said corporation and in its name and stead, either alone or jointly with others, as may be required and necessary, to make, execute, acknowledge and deliver, good and sufficient deeds, conveyances, options, contracts, or leases upon or for said property, or for any part or parts thereof, or for any rights therein or thereon, giving and granting its said attorney full power and authority to do and perform any and every act and thing whatsoever requisite and necessary to be done in the premises, the said corporation hereby ratifying and confirming all that its said attorney shall lawfully do, or cause to be done, by virtue of the terms of this instrument.

In witness whereof, said corporation has hereunto caused its corporate name to be signed by its President and its corporate seal to be affixed by its Secretary at the City of

Washington, District of Columbia, on this the 1st day of March, 1904.

NEW ERA PRINTING COMPANY,
By JAMES WILLARD,
President.

(Corporate Seal.)

ATTEST:
J. F. WESTON, Secretary.

(Acknowledgment.)

.....

A power of attorney being in legal effect the mere appointment of an agent with a definition of his authority, may be revoked at any time prior to its having been executed so far that interests or rights have vested in favor of third parties. This proposition does not hold true, however, where it constitutes an agency coupled with an interest. In that case a clause should be added defining the interest of the agent and stating that it is irrevocable prior to full execution, or that it is irrevocable prior to a certain date or contingency, whatever it is.

A power of attorney authorizing a sale or conveyance of an interest in real estate, or to encumber real property, should be acknowledged according to the law of the State, District, Territory, or foreign country where such real estate is situate.

§ 185. Treasurer's Bond.

In all corporations whose transactions are of considerable financial magnitude, the Treasurer is usually required to give a bond to secure fidelity in handling and accounting for the corporate funds. The execution, delivery and aproval of the bond should be a condition precedent to the Treasurer being entrusted with any funds.

The following form is easliy adaptable to any State. The approval of the bond should be by the Board of Directors entered in the minutes, and the Secretary should make a memorandum thereof on hteback of the bond:

Form 159.

.....

TREASURER'S BOND.

Know all men by these presents, that we, James Knox, of the City of Washington, District of Columbia, as principal, and J. J. Stetson and Warren Dumont, both of the City of Washington, District of Columbia, as Sureties, are held and firmly bound unto the New Era Printing Company, a corporation, in the sum of Twenty-five Thousand Dollars, to the payment of which to the said corporation, we, by these presents, jointly and severally, bind ourselves, our heirs, executors and administrators.

Upon condition that, whereas, the said James Knox has been elected Treasurer of the said New Era Printing Company, a corporation, for the term of one year from the 1st day of March, 1904, and whereas, he may hereafter be re-elected, or may continue to act as such officer for a longer period than one year;

Now, therefore, if the said James Knox shall hereafter, in all respects, fully and faithfully perform and discharge the duties of said office so long as he shall occupy the same or continue therein, and shall, when properly so required, fully and faithfully account to the said corporation for all moneys, goods and properties whatsoever, for or with which the said James Knox may be in anywise accountable or chargeable to the said corporation, and if in the event of his death, resignation or removal from office, all books, papers, vouchers, money and other property of whatever kind in his custody belonging to the said corporation, shall be forthwith restored to the

said corporation, then this obligation shall be void; otherwise shall remain in full force and effect.

JAMES KNOX, (Seal.)
J. J. STETSON, (Seal.)
WARREN DUMONT (Seal.)

(Acknowledgment.)

Endorsement by Secretary:: Approved March 1st, 1904. See Minute Book, page .....)

.....

§ 186. Indemnity Bond Where Certificate Is Lost or Stolen, Upon Issue of New Certificate.

Form 160.

.....

Know all men by these presents, that we, Robert Ainslie, of Georgetown, D. C., as principal, and J. J. Stetson and Warren Dumont, both of Washington, D. C., are held and bound unto the New Era Printing Company, a corporation, in the sum of Ten Thousand Dollars ($10,000), to the payment of which to the said corporation, we, by these presents, jointly and severally bind ourselves, our heirs, executors and administrators.

Upon condition that: whereas, the said Robert Ainslie, the owner of record of one hundred shares of the capital stock of said New Era Printing Company of the par value of one hundred dollars each, has made application to the Board of Directors of the said Company for the issue to him of a new certificate for the said one hundred shares of stock, alleging that the original certificate No. ....., issued to him therefor on the first day of May, 1904, is lost, stolen or destroyed, and that its present whereabouts and condition are unknown to him; and whereas the said application has been granted, and the said new certificate for one hundred shares of the capital stock of said corporation, pursuant to the resolution of the said Board of Directors, was this day issued to the said Robert Ainslie;

Now, therefore, if the said Robert Ainslie, his heirs, executors, or administrators, or any of them do and shall,

from time to time, and at all times hereafter, save, defend, keep harmless and indemnify, the said corporation from and against all demands, claims, or causes of action, arising from, or on account of said certificate No. ...., for one hundred shares of the capital stock of said corporation, and of and from all costs, damages and expenses that shall or may arise therefrom, and shall also deliver, or cause to be delivered up to the said corporation the said missing certificate No. .... for cancellation, if, and whenever, and so soon as, the same shall be found or recovered, then this obligation shall be void; otherwise it shall remain in full force and effect.

Witness our hands and seals this, the 10th day of May, 1904.

ROBERT AINSLIE, (Seal.)
J. J. STETSON, (Seal.)
WARREN DUMONT. (Seal.)

(Acknowledgment.)

Endorsed by Secretary: approved May 15th, 1904. See Minute Book, page .....

.....

§ 187. Bonds Issued to Represent Corporate Indebtedness.

Before bonds are issued by a corporation, authorization is obtained from the stockholders, either for the creation or for an increase of bonded indebtedness, and all the proceedings are certified by the directors and filed with the proper county officer; as to which, see Chapter 19.

Form 161.

.....

CORPORATE BOND.

UNITED STATES OF AMERICA, STATE OF .....
RICH VALLEY CANAL COMPANY.

No. ....., Five Per Cent. Gold Bond.

KNOW ALL MEN BY THESE PRESENTS: That the

Rich Valley Canal Company, a corporation duly organized and existing under the laws of the State of ....., U. S. A., and having its principal place of business in the City of ....., County of ....., State of ....., for value received, hereby promises to pay to the bearer, at the office of the Safe Security Trust Company, in the City of ....., County of ....., State of ....., the sum of Five Hundred Dollars ($500.00) in Gold Coin of the United States of America, of the present standard of weight and fineness, on the 1st day of January, in the year of our Lord, One Thousand Nine Hundred and Thirty-five, with interest thereon, from the 1st day of January, A. D. 1905, until paid, in like gold coin, at the rate of five (5) per cent. per annum, payable semi-annually on the first day of January and the first day of July in each year, upon the presentation and surrender of the annexed coupons authenticated by the signature or the fac simile signature of the Secretary, as they severally mature, and in case of default in the payment of any of said coupons for a period of six months after such maturity and presentation, the principal of this bond may become due and payable in the manner, and with the effect, and subject to the conditions provided and specified in the mortgage or trust deed hereinafter mentioned, securing the payment of this issue of bonds.

This bond is one of a series of five hundred of like form, tenor, effect, amount and date, and numbered consecutively from one (1) to five hundred (500), both inclusive, issued under and in accordance with the terms and conditions of said trust deed or mortgage and limited in amount to Two Hundred and Fifty Thousand Dollars ($250,000.00), the same having been duly authorized by the Board of Directors and by the unanimous vote of the stockholders of the said Rich Valley Canal Company, which vote was given at a meeting of said stockholders duly and legally called for that purpose and held in the manner prescribed by law on the 15th day of May, A. D. 1904, after due and legal notice of such meeting, given as required by law; and secured by a mortgage or trust deed bearing even date herewith, duly authorized and executed by

said Rich Valley Canal Company, to the Safe Security Trust Company, therein mentioned as trustee for the holders of said bonds upon the property used, had, held and owned by said obligor, in connection with and comprising its plant and system of works, and upon all property that may hereafter be acquired or constructed for like purposes.

This bond shall pass by delivery, unless registered on the books of the trustee, but after registration duly endorsed hereon, no transfer except upon said books shall be valid, unless the last registration shall have been to bearer.

This bond shall not become valid and obligatory until authenticated by the certificate of the said Safe Security Trust Company, the trustee named in said mortgage or trust deed endorsed hereon, or its lawful successor as trustee.

IN WITNESS WHEREOF, the said Rich Valley Canal Company has caused its corporate seal to be hereunto affixed and its corporate name to be subscribed hereto by the President and Secretary thereof, this 31st day of May, A. D. 1904, and the attached coupons to be authenticated by the signature, or fac simile signature, of its Secretary lithographed thereon.

RICH VALLEY CANAL COMPANY,
By JOHN D. WHITLOCK,
(Corporate Seal.) President.
And by EMERSON SHARP,
Secretary.

.....

To each of said bonds will be attached sixty coupons, numbered from one (1) to sixty (60), the first of which will read as follows:

Form 162.—Coupon.

.....

No. 1. $12.50.

Rich Valley Canal Company will pay to the bearer on the first day of January, A. D. 1905, Twelve and 50-100 Dollars ($12.50) in United States Gold Coin, being six months' interest on its bond, numbered ....., at the office of the Safe

Security Trust Company, in the City of ....., State of .....
EMERSON SHARP,
Secretary.

Upon each of said bonds should also appear a certificate signed by the said trustee, or its successor, through and by the proper officers, as follows :

Form 163.—Trustees Certificate.

It is hereby certified that the within bond is one of a series of five hundred (500) bonds described in the trust deed therein mentioned.

SAFE SECURITY TRUST COMPANY TRUSTEE.
By HENRY SIGISMOND, President.
Attest: ROBT. REAY, Secretary.
(Corporate Seal.)

And on the back of each bond, in addition to the ornamental, and engraved endorsement, setting forth in brief what it is, by what company issued, amount, date of maturity, rate of interest, and when payable, should also appear a blank for registration; that is, if the issue be of registered bonds. Said blank may be as follows :

Form 164.

Date of Registry.	In whose name Registered.	Transfer Agent.

§ 188. Acknowledgments and Verifications.

The ordinary forms of acknowledgments and verification require some modification in case of corporations. A corporation can only acknowledge or verify an instrument through the agency of an officer, or by an agent having the requisite authority. The combined acknowledgment and verification to instruments are coming into general use in some of the States, and possess advantages over simple acknowledgments.

The following is an exemplar :

Form 165.

.....

District of Columbia, } ss.
City of Washington. }

Be it remembered that on this, the first day of March, 1904, before me personally came James Willard, personally known to me, who being first duly sworn, deposes and says: That he resides in the City of Washington, D. C.; that he is the President of the New Era Printing Company, the corporation described in and executing the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal, and that it was affixed by order of the Board of Directors of said corporation, and that he signed the corporate name thereto by like order as President of said corporation.

JAMES WILLARD.

Subscribed and sworn to before me this the first day of March, 1904.

(Notarial Seal.) NEWTON WISHART,
Notary Public within and for the
District of Columbia.

.....

If any officer or person had been named in the reso-

lution to act jointly with the President, the following form might have been used:

Form 166.

.....

District of Columbia, } ss
City of Washington. }

Be it remembered that on this, the first day of March, A. D. 1904, before me personally came James Willard and Henry Hoop, both personally known to me, and being by me first duly sworn, did each for himself, and not the one for the other, depose and say that he executed the above instrument on behalf and in the name of the New Era Printing Company, under authority from said corporation, to wit., pursuant to a resolution of its Board of Directors, regularly adopted on the 25th day of February, 1904; and the said James Willard deposes and says that he resides in said City of Washington, District of Columbia; that he is the duly elected and acting President of said Corporation described in and executing the above instrument; that the seal affixed to said instrument is the seal of said corporation, and that it was affixed by order of the Board of Directors of said corporation, and that he signed the corporate name thereto by like order, as President of said corporation.

HENRY HOOP,
(Corporate Seal.) JAMES WILLARD

Subscribed and sworn to before me this the the first day of March, 1904.

NEWTON WISHART,
(Notarial Seal.) Notary Public within and for the District of Columbia.

.....

Such forms are accepted as a better guarantee of genuineness and authenticity than the common form used in most of the States, which would be as follows:

Form 167.

(Inferior in point of authenticity to the next preceding Form.)

.....

District of Columbia, } ss.
City of Washington. }

Be it remembered that on this, the first day of March, 1904, before me personally came James Willard, personally known to me to be the President of the New Era Printing Company, a corporation, and acknowledged that he executed the above instrument as such president in the name, and on behalf of said corporation, for the purposes therein set forth.

In witness whereof I have hereunto affixed my signature and seal of office the day and year above written.

NEWTON WISHART,
(Notarial Seal.) Notary Public within and for the District of Columbia.

.....

§ 189. The Testimonium Clause.

The testimonium clause seldom adds anything of contractual force to an instrument, and it might without loss be abandoned. If an instrument, except the signatures, should terminate with the covenants or undertakings, or with whatever the parties have to say on the subject matter of the instrument, and then end with the proper corporate signature, omitting the testimonium, it would be as valid, to all intents and purposes, as with the latter. But old forms and customs are not easily overthrown; and an entire omission of the testimonium clause might sometimes excite suspicion or cause delay.

There are several forms of it, the following being that most in use:

Form 168.

In witness whereof the said New Era Printing Company has, by its President, hereunto subscribed its name and affixed its duly attested corporate seal, at the City of Washington, D. C., this the first day of May, 1904.

NEW ERA PRINTING COMPANY,
By JAMES WILLARD,
(Corporate Seal.) President.
Attest:
J. F. WESTON, Secretary.

Two or more corporations may contract by different corporate officers, or one by one officer and the other by one not holding a similar or a different station or relation. It is not necessary in such cases to set forth all such relations to the testimonium clause, which may be as follows:

Form 169.

In witness whereof the above-named parties to this instrument have, by their respective officers duly authorized, hereunto signed their names and affixed their corporate seals at the City of Washington, D. C., on this the 1st day of May, 1904.

NEW ERA PRINTING COMPANY,
By JAMES WILLARD,
(Corporate Seal.) President.
Attest:
J. F. WESTON, Secretary.

ECONOMY PRESS COMPANY,
By WILLIAM EDSON,
(Corporate Seal.) General Manager.
Attest:
HENRY HUDSON, Secretary.

Or the persons executing the instrument may be both a corporation and an individual, in which case the testimonium clause would be thus:

Form 170.

.....

In witness whereof the said New Era Printing Company, party of the first part, has, by its President and Secretary, signed its name hereto and affixed its corporate seal hereunto, and the said party of the second part has affixed his signature and seal hereto, at the City of Washington, D. C., on this the first day of May, 1904.

NEW ERA PRINTING COMPANY,
By JAMES WILLARD, President.
(Corporate Seal.) J. F. WESTON, Secretary,
J. B. PURVIS. (Seal.)

.....

The case of an agent other than an officer executing an instrument, and in the case of an officer executing an instrument in consummating a transaction outside the scope of his usual duties and powers, the testimonium clause should recite the existence of the resolution, or power of attorney, conferring the authority upon him, thus:

Form 171.

.....

In witness whereof the said New Era Printing Company, a corporation, by its agent, Henry Goodfellow, authorized and appointed hereunto, by resolution of its Board of Directors (a copy of which resolution certified by its Secretary, under its corporate seal, is annexed hereto), has hereunto signed its name, at the City of Washington, D. C., on the first day of May, 1904.

NEW ERA PRINTING COMPANY.
By HENRY GOODFELLOW, Agent.

.....

With a copy of the resolution appointing and authorizing the agent to act for the corporation, certified as a true copy by the Secretary under the corporate seal, the authenticity of the instrument so executed would be placed beyond controversy.

§ 190. Receipts, Drafts, Checks and Promissory Notes.

Receipts, drafts and checks should have been printed at the top or across the end the name of the corporation, and then may be simply signed by the proper officer with his official designation.

The purpose for which, or account upon which, a check is drawn is often printed upon the check. There is also a stub to such checks, which, in addition to a mention of the purpose, contains a receipt from the person to whom the check is given. This economizes in the matter of bookkeeping, and preserves evidence of payment.

Promissory notes should be executed in the name of the corporation, and should never use the first personal pronoun.

A note reading, "I promise to pay," etc., would probably bind only the person signing it, though he designated himself by a full official title. He might, however, show, by extrinsic evidence, as between himself and the corporation and the payee, that the note was given in the course of corporate business, and that the payee had knowledge of that fact at that time.

The following will be found a sufficient form for an ordinary corporate note:

Form 172.

.....

Washington, D. C. March 1, 1904.

$500.

Six months after date, for value received, the New Era Printing Company, a corporation, promises to pay to the order of John Goode, the sum of Five Hundred Dollars.

NEW ERA PRINTING COMPANY,
By JAMES WILLARD, President.

.....

A proper modification would adapt the above form to suit any and all circumstances, such as naming a rate of interest, place of payment, waiving demand and protest, etc.

A corporate note, with collateral security, might read as follows:

Form 173.

.....

Washington, D. C., March 1, 1904.

$10,000.

One year after date, the New Era Printing Company, a corporation, promises to pay to the order of John Rushing at the Safety and Security Bank of the City of Washington, D. C., the sum of Ten Thousand ($10,000) Dollars in Gold Coin of the United States, with interest from the present date until paid at the rate of six per cent, per annum. And the said New Era Printing Company herewith deposits with the said John Rushing as collateral security for the due payment of the foregoing promissory note, two hundred shares of treasury stock owned by it, in two certificates, each representing one hundred shares, numbered respectively 15 and 16, said certificates standing in the name of James Knox, Treasurer of the said New Era Printing Company, and endorsed by him in blank upon the back of each of said certificates.

And in the event that this note, or the interest thereon, shall not be paid when due, the said New Era Printing Company hereby appoints and constitutes the said John Rushing

its attorney, in fact and irrevacoble, with power of substitution, to sell at any time after this said note, or any interest thereon is due and unpaid, with or without notice, and either at public or private sale, the whole or any part of said securities, the proceeds thereof to be applied to the payment of the the said promissory note, any interest due thereon, and any commissions properly payable on the sales of said securities so sold, and any surplus remaining thereafter, either of cash or of the said securities, to belong to and be subject to the order of the said New Era Printing Company.

In Testimony Whereof, the corporate signature of the said New Era Printing Company is hereunto affixed by the President and Treasurer, duly authorized thereto by a resolution of the Board of Directors of said Company, passed at a regular meeting of said Board, held February 23, 1903, a duly certified copy whereof is hereunto attached.

NEW ERA PRINTING COMPANY,
(Corporate Seal.) By JAMES WILLARD,
Attest: President.
J. F. WESTON, Secretary.

.....

Attached to the above note should be a copy of the resolution referred to therein, certified by the Secretary.

§ 191. Prospectuses.

The only proper office of a prospectus is to present inducement to the public, or to a class, to invest in the shares of a corporation already formed or whose formation is contemplated. Prospectus take their form, and their contents are controlled to a great extent, by the stage at which they are promulgated. A promoter will sometimes set forth his scheme in print before any articles of incorporation are filed or any step is taken to organize. This method is preferable

where he has no intention or desire to hold a controlling interest, and expects to make his profits at the inception, allowing the incorporators to conduct the enterprise or develop the property with future profits in view. When this method is adopted, the promoter is usually the owner of, or has an option on, that which is to constitute the basic property of the corporation in contemplation, and his main purpose is to make an advantageous sale of the property. The creation of a corporation is merely the means to an end. Or, the promoter, or promoters, may undertake the creation and floating of the corporate enterprise with a reservation of a substantial interest in stock, but not a controling interest, in return for their property, desiring no cash payment. Such is the usual plan where they are confident that the enterprise will prove to be extremely profitable, and that a minority interest will, if the scheme is prudently and honestly conducted, alone bring large returns. But, under either of the conditions above authorized, the same end may be reached by first forming and completing the organization.

A great many of the prospectuses that are circulated embody a proposition to sell treasury stock, that being a convenient and plausible method of raising cash capital with which to develop property, or otherwise carry out the purposes of the incorporators. Preliminary to the issuance of such a prospectus there must, of course, be treasury stock provided. To do this there must have been previously a regular issue of the stock or property and then a donation of the stock to the corporation, or it must have been forfeited

to the corporation for non-payment of assessments. (As to which see also § 98.)

The incorporators usually subscribe for only a nominal or at most, a minority of the specified capital stock, leaving the balance open to those they may induce to advance capital and come in afterwards. And it may be safely asserted that 90 per cent. of prospectuses are issued after the corporation has been organized and fully officered.

Printed documents are often promulgated to induce patronage after the corporation has been set on its feet and begun business. These, too, are often termed prospectuses ; but they are not such, in any proper sense. They are mere advertisements of the business.

Nothing pertaining to corporate business, excepting, of course, the judicial settlement of knotty legal questions, requires more skill and ability than the preparation of a prospectus. The literary productions of this class are as numerous and varied in matter, quantity and quality as are corporate schemes, mental endowments, subjects for exploitation and development.

It may be said, in a general way, that in order to make the best impression a natural order of arrangement of the parts should be adopted, and a clear and concise style of composition attained and adhered to. That is about all that can be said, unless a large volume could be devoted to this subject alone.

From the nature of the case it would be useless to insert exemplars. Prospectuses vary in size

from a small folder containing a brief statement and the names of the officers, to a book of many pages, profusely illustrated, with maps and pictures.

§ 192. Various Instruments, Often Used By, But Not Peculiar to, Corporations.

The following forms are such as are used between individuals, not being peculiar to corporations. But as transactions between corporations, and between corporations and individuals, frequently involve the subjects of these forms, it is thought that the space devoted to them will be acceptably utilized. Those here given may be easily adapted to other dealings:

Form 174.

.....

LEASE OF MINERAL LANDS.

MEMORANDUM OF AGREEMENT, Made and entered into this..... day of ....., A. D. 19...., by and between .... of ....., part..... ..... of the first part, and ....., part..... of the second part,

Witnesseth: That for and in consideration of the mutual covenants and agreements herein contained, and in further consideration of the sum of ..... Dollars, by the part.... of the second part to the part.... of the first part in hand paid, the said part.... of the first part ha.... granted and do.... by these presents grant and lease unto the said part.... of the second part the exclusive right for the sole and only purpose of operating for coal, oil, gas and other minerals, all that certain tract of land situate, lying and being in the County of ..... State of ....., and bounded and described as follows:

(Here insert full description.)

Subject to the conditions, terms, restrictions and agreements hereinafter set forth :

That the term of this lease shall be for ten years, with the privilege of a renewal for an additional ten years, and so long as oil, gas, coal and other minerals shall be found in paying quantities, the part.... of the second part shall deliver to the part.... of the first part a full ..... part of such product.

That the part.... of the second part shall commence a well within ..... from the date hereof, and sink it with reasonable diligence;

The part.... of the second part shall have the privilege of using sufficient wood, surface land, water, coal, gas and oil from the premises to run necessary machinery, and other purposes pertaining to said operations, and the right to remove all machinery and fixtures placed on the premises by them at any time, with the right of ingress and egress, and the exclusive right to lay and operate pipe-lines or rails to convey oil, gas and other substances.

That the part.... of the second part, ... heirs or assigns, shall have the right to subdivide said tract of land into any number of smaller lots or pieces, or sublease the whole or any part of said tract of land, for the purposes named in this lease.

That if oil or mineral of any kind is not found in paying quantities after one well has been completed upon the premises hereby leased within ..... years from the date hereof, then the lease is void, and of no effect. And a written notice by either party at the expiration of said ..... years shall constitute notice as to the termination of the lease.

That the part.... of the second part are to keep true and correct books of accounts showing the production of each and every well, and the shares or portions due the part.... of the first part, which books shall be kept open and free to the inspection of all parties interested therein.

That it is further understood and agreed by the part....

of the first part, ... that if the parties of the second part elect to bore the first well upon other land not described in this lease, that may be selected within a radius of three miles from the above described land by said parties of the second part, the parties of the second part have one more year in which to sink a well upon the land described in this lease before the lease is forfeited and becomes null and void.

And it is further understood and agreed between the parties of the first and second part that the said part..... of the first part gives and grants unto the said part.... of the second part the exclusive and sole right on or before ..... years from and after this date to purchase the royalty derived from the oil and mineral upon all or any portion of the land above described and leased to the part.... of the second part by paying to the part..... of the first part .....dollars per acre, as payment in full for all royalty benefits derived from the land so selected and purchased.

A failure on the part of the part..... of the second part to commence operations within the specified time, or to perform all conditions embodied herein or pay the royalty above mentioned, renders this lease null and void.

It is agreed further, that any forfeiture of this lease by non-performance or surrender, shall terminate all liabilities to accrue under and by virtue of its terms.

That all conditions herein shall extend to the heirs, administrators executors and assigns of both parties.

In Witness Whereof, the parties hereto have hereunto set their hands on the day and year first above written.

(Signatures.)

(Acknowledgment.)

.....

Form 175.

.....

BILL OF SALE.

Corporation to Individual, With Guarantee of Title.

Know All Men By These Presents, That the New Era Printing Company, a corporation, duly organized under the laws of the State of ....., in acknowledgetion of the sum of two thousand dollars ($2,000) to it paid by John Dickson, the receipt whereof is hereby acknowledged, hereby sells, transfers and assigns to the said Dickson the followings goods and chatels:

All the printing presses, type metal, chases, faces of type, and linotype machines now in the printing office of said corporation at its place of business, at No. 50 Printing House Square, in the City of Washington, District of Columbia, particularly inventoried and described in the annexed schedule.

To Have and to Hold, all and singular the said goods and chattels to the use and benefit of the said Dickson, his heirs, personal representatives and assigns.

And the said corporation hereby covenants with the said Dickson that it is the lawful owner of said goods and chattels; that the same are free from all liens; that it has a perfect title to, and a right to sell, transfer and assign the same, and that it will warrant and defend the same against the lawful claims and demands of all persons whatsoever.

(Testimonium Signatures and Seal.)

.....

The Secretary should attach the corporate seal to the schedule and attest it in the usual form for purposes of further identification.

A bill of sale from a corporation to a corporation, or from an individual to a corporation, would require but a slight modification of the above form.

Assignments of patents are frequently made from

inventors and assignees of inventors to corporations. The following form contains no acknowledgment nor do the rules of the patent office where such assignments are recorded require them to be acknowledged. An acknowledgment before a notary public or some other officer having a seal readily suggests itself as the easiest and most satisfactory way of settling any question that might arise as to the genuineness of the signature.

Form 176.

.....

ASSIGNMENT OF PATENT BY AN INDIVIDUAL TO A CORPORATION.

Whereas, I, John Dickson, of the City of Washington, District of Columbia, did, on the 1st of May, 1903, obtain letters patent of the United States for an improvement in type cleaners, to wit: letters patent numbered 786,320, bearing date of said 1st day of May, 1903; and, whereas, I, the undersigned, am the sole owner of said patent, and of all rights under the same; and, whereas, the New Era Printing Company, a corporation duly organized and doing business under the laws of the State of ....., is desiring of acquiring ownership and entire control of my entire interest in said patent;

Now, therefore, to all whom it may concern, be it known, that for and in consideration of the issue to me, or to my order, by said corporation, of five hundred shares of its capital stock (of which five shares were heretofore issued to me) the receipt of certificates representing all of said stock, amounting to the par value of fifty thousand dollars ($50,000), is hereby admitted, I have this day sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said New Era Printing Company the entire right, title and interest in and to the said improvement in type cleaners, and in and to the letters patent therefor aforesaid: the same to be held and enjoyed by the said New Era Print-

ing Company for its own exclusive use and benefit, and for the use and benefit of legal representatives, successors and assigns, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and note not been made.

In Testimony Whereof, I have hereunto set my hand and affixed my seal, at Washington, D. C., this the 1st day of May, 1904.

JOHN DICKSON, (Seal.)

(Signatures of attesting witnesses or acknowledgment in usual form.)

Assignment of a patent from one corporation to another, or from a corporation to an individual would be in the same form as the above, with but slight modification.

In the transaction of corporate business, contracts are frequently made in the names of individuals, to be assigned afterwards to a corporation. The assignment may be elaborate and formal, or it may be simply an endorsement on the back of the contract. Both forms are found below.

The longer form might be attached to the contract if the latter were in writing.

Form 177.

ASSIGNMENT ENDORSED UPON CONTRACT.

For a valuable consideration, the receipt whereof is admitted, I hereby assign and transfer to the New Era Printing Company, a corporation, the within contract, and all the rights, privileges and obligations thereunder as therein set forth. JOHN DICKSON, Seal.)

Witness to Signature: J. F. WESTON,

Secretary, New Era Printing Company.

Form 178.

ASSIGNMENT OF CONTRACT — INDIVIDUAL TO CORPORATION.

Know All Men By These Presents, That for and in consideration of the isuue of the New Era Printing Company, a corporation, organized and doing business under the laws of the State of ....., of certificates for five hundred shares of its capital stock, of the par value of fifty thousand dollars ($50,000) full paid, to the undersigned, John Dickson, the receipt of which said certificates is hereby admited, I, John Dickson, hereby sell, assign, and transfer to the said corporation all and singular my right, title and interest of every kind in and to a certain contract, a copy of which is hereunto annexed, and by this reference made a part of this instrument, entered into on the 1st day of March, 1904, between one Nelson Dodd, of Washington, D. C., and the undersigned, whereby the said Dodd covenanted and bound himself to execute and deliver to the undersigned a twenty-year lease of certain real estate in said annexed contract described, in consideration of payments then and there made to the said Nelson Dodd as specified in said annexed contract specified and admitted; the said corporation to hold, enjoy and exercise the exclusive right to demand, and, under its terms to enter into the possession and ocupancy of said premises and real estate for the full term in said contract mentioned.

Witness my hand and seal, at Washington, D. C., this March 1st, 1904.

JOHN DICKSON, Seal.)

(Acknowledgment in the usual form.)

Form 179.

CHATTEL MORTGAGE.

Know All Men By These Presents, that whereas the New Era Printing Company, a corporation organized and doing business under the laws of the State of .....,

is indebted to John Dickson in the sum of two thousand dollars ($2,000.00) for printing presses and office equipment in the printing office of said corporation.

Now, for the purpose of securing payment of said sum and the interest thereon to the said John Dickson, the said New Era Printing Company hereby sells, assigns and transfers to the said John Dickson, all the goods, wares and articles of personal property, described as follows:

Two Rotary (Hoe) Printing Presses, new.

Two Linotype (Smith) Machines Nos. 8691 and 8692.

Said property now being and remaining in the possession of the said New Era Printing Company at No. 50 Printing House Square, Washington, D. C.

Provided, and this mortgage is made upon the express condition that, if the said New Era Printing Company shall pay to the said John Dickson the sum of two thousand dollars ($2,000) with interest from the date hereof, at the rate of ten per cent. per annum, on or before the 1st day of September, 1904, which said sum the said corporation hereby agrees and binds itself to pay upon said last named date, then this transfer is to be void and of no effect; but should said corporation for any reason fail to pay said sum with interest thereon to the date of payment, on or before the date for payment aforesaid, then the said Dickson shall have full power and authority to enter upon the premises of said corporation, or any other place or places where the said goods, chattels and personal property may be, and to take possession of and sell the same, or so much thereof as may be necessary to satisfy the said debt and the interest thereon from the proceeds thereof, after deducting all the expenses of such sale and any charges that may be incurred in the keeping of said property; and any such sale shall be public and only after due announcement thereof for two weeks previous thereto in one of the daily papers published in the City of Washington D. C., and any proceeds in excess of the amount of said debt and interest thereon, and

of the expenses of said sale and keeping of said property, shall belong to the said corporation and be paid over to it without demand and without delay. And if from any cause said property shall fail to satisfy said debt, interest, cost and charges, said corporation hereby agrees to pay the deficiency.

In Witness Whereof, the New Era Printing Company has signed its name hereto, by its President, and annexed its seal, duly attested by its Secretary, this March 1st, 1904.

(Corporate Seal.)

NEW ERA PRINTING COMPANY.

J. F. WESTON, Secretary.

(Acknowledgment.)

.....

Investments whereby interests in real estate are conveyed, encumbered, or otherwise affected by corporations, are of great variety.

The simplest form, that of a conveyance in fee simple, is here given :

Form 180.

.....

CONVEYANCE OF REAL ESTATE IN FEE SIMPLE.

This Indenture, made the 1st day of March, A. D. 1904, between the New Era Printing Company, a corporation organized and doing business under the laws of the State of ....., party of the first part, and John Dickson, of the City of Washington, in the District of Columbia, party of the second part;

Witnesseth: That the said party of the first part, in consideration of the sum of five thousand dollars ($5,000) lawful money of the United States, paid to it by the said party of the second part, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, releases and conveys to the said party of the second part, his heirs and assigns forever, all that lot and parcel of land situate in the City

of Washington, District of Columbia, prticularly described as follows:

(Here insert particular description.)

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To Have and to Hold, the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part hereby covenants with the said party of the second part as follows:

First: That the party of the first part is seized of the said premises in fee simple and has a good right to convey the same.

Second: That the party of the second part shall quietly enjoy the said premises.

Third: That the said premises are free from encumbrances.

Fourth: That the party of the first part will execute or procure any further necessary assurance of the title to the said premises.

Fifth: That the party of the first part will forever warrant the title to said premises.

In Witness Whereof, the said party of the first part, the New Era Printing Company, has affixed hereunto its corporate seal, attested by its Secretary, these presents to be signed, acknowledged and delivered in its name and on its behalf by its President, on the day and year first above written.

NEW ERA PRINTING COMPANY.

(Corporate Seal.) By JAMES WILLARD, President.

Attest:

J. F. WESTON, Secretary.

(Acknowledgment.)

CHAPTER XXIV.

Dissolution and Winding Up.

193. Methods for Terminating Corporate Existence.
194. Acts and Occurrences Which Do Not Amount to a Dissolution.
195. Procedure for Voluntary Dissolution.

§ 193. Methods for Terminating Corporate Existence.

Corporate existence may be terminated in either of two ways: (1) By forfeiture at the suit of the government by which it was created; or (2), By the voluntary action of its members or stockholders. There is a third method of dissolution recognized at the common law, viz.: by loss of an integral part, for instance, by loss of all the members by death, resignation or amotion. But since stock in a corporation is transferable, and passes to the personal representative of the stockholder upon his death, and since there is no such thing as resignation distinct from a transfer of shares in a capital stock corporation, it is difficult to conceive of a loss of corporate existence by such a corporation otherwise than by either voluntary or involuntary dissolution.

It may be well to note that, for the purpose of reaching the ends of justice, courts of equity will sometimes treat a corporation as dissolved, when in legal sense, no dissolution has occurred.[1]

Whether a consolidation effects a dissolution of the consolidating companies is a question of law, and generally depends upon the construction of the statute

or provision in the charter under which it is brought about. In most cases it results in a practical dissolution.[2] The general rule is subject, however, to exceptions, arising from the wording of the statutes and the peculiar circumstances of each case.[3]

General statutory provisions in most of the States impose upon the new corporation the obligation of the consolidating companies.

§ 194. Acts and Occurrences Which Do Not Amount to a Dissolution.

But a corporation is not dissolved from a failure to elect officers.[4] Nor by a sale and assignment of all corporate property.[5] Nor because one person owns all the stock.[6] Nor by a cessation of all corporate business.[7] Nor by insolvency.[8]

§ 195. Procedure for Voluntary Dissolution.

In the absence of statutory provisions for voluntary dissolution, it is an important and a somewhat unsettled question by whom the power to effect a dissolution may be exercised, whether a bare majority have power to dissolve the corporation or unanimous consent is required. This question is of little or no importance, however in most of the States, statutes having provided the conditions and the procedure upon which corporations may be voluntarily dissolved.

The following forms will be found sufficient or easily adaptable in most of the States :

Form 181.

.....

RESOLUTION CALLING MEETING TO CONSIDER PROPOSITION TO DISSOLVE.

Whereas, this corporation has entirely ceased to do the business for which it was formed and organized; and whereas, all indebtedness has been paid, and it appearing to be to the best interest of the stockholders that it should be dissolved, its business terminated and its remaining assets distributed among the stockholders, or otherwise disposed of according to law:

Therefore, Resolved, that a special meeting of the stockholders of the New Era Printing Company be and is hereby called, to be held at the office of said corporation, at No. 50 Printing House Square, in the City of Washington, District of Columbia, on the last day of July, 1904, at the hour of 10 o'clock A. M., for the purpose of considering and acting upon a proposition to dissolve said corporation, wind up its business and dispose of its assets.

And the Secretary is hereby authorized to give notice of said meeting by publishing notice thereof in the "Washington Post," a daily and weekly newspaper published in said City, once each week for at least two weeks prior the date of said meeting, and by mailing a copy of said notice to each of the stockholders whose names appear on the company's books, in the manner provided in the by-laws for giving notices for special meetings of the stockholders.

.....

Form 182.

.....

PUBLISHED NOTICE OF STOCKHOLDERS' MEETING TO CONSIDER PROPOSITION TO DISDISSOLVE.

Pursuant to a resolution duly offered and adopted by the Board of Directors of the New Era Printing Company at a regular meeting of said Board, held at the office of said corporation on the 15th day of June, 1904, and entered in the

Minute Book of said corporation as part of the proceedings at said meeting, notice is hereby given that a meeting of the stockholders of said corporation is hereby called, and will be held at the office of said corporation, at No. 50 Printing House Square, in the City of Washington, in the District of Columbia, on the 1st day of July, 1904, at the hour of 10 o'clock A. M .,for the purpose of considering and acting upon the proposition to dissolve the said corporation, wind up its business and dispose of its assets.

J. F. WESTON,
Secretary of said Corporation.

Form 183.

FINAL RESOLUTION OF DIRECTORS PURSUANT TO AUTHORITY FROM STOCKHOLDERS.

Whereas, on the 1st day of July, 1904, the stockholders of this corporation, in special meeting assembled, upon due notice published and given to each and every stockholder, according to law and the by-laws of this corporation, the New Era Printing Company, passed and adopted, by unanimous vote, a resolution that immediate steps be taken for the dissolution of this corporation and the distribution of its assets remaining after all indebtedness, including costs and expenses incured in carrying out said resolution, are fully paid, and it appearing that all existing indebtedness has been fully paid ;

Therefore, Resolved, that the President and Secretary be, and they are hereby, authorized and directed to cause to be prepared by a competent attorney, or attorneys, to be by them employed on behalf of this corporation for that purpose, a proper petition to the proper court, praying for the dissolution of this corporation and to prosecute the proceeding to be instituted by the filing of said petition to final judgment.

Resolved, Further, that, upon the procurance of a preliminary order favorable to the petitioners, said costs and expenses of said proceeding, including a reasonable attorney's

fee, to be agreed upon between said President and Secretary and said attorney, or attorneys, be paid out of the assets of this corporation, and that the remaining assets be forthwith distributed pro rata by the said President and Secretary; that in making such distribution they require from the stockholders proper receipts and acquittances, in full, for their respective shares of the assets of this corporation, and the surrender of their certificates of shares in the capital stock of this corporaton, properly endorsed, to be held by the President and Secretary for cancellation, upon the entry of a final decree of dissolution.

.....

The foregoing resolution by the Directors (Form 183), with proper modification, will answer for the stockholders' meeting:

Form 184.

....

PETITION TO COURT, BY DIRECTORS.

In the ..... Court, within and for the County of ....., in the State of .....

In the matter of the voluntary dissolution of the New Era Printing Company, a corporation.

To the Honorable ..... Court of the County of ....., in the State of .....

Now comes the ....., a corporation, by ....., its Board of Directors, heretofore duly elected, qualified, and now acting as such Board, and shows to your Honorable Court:

That said ..... is a corporation, heretofore duly organized, and now existing under the laws of the State of ....., and having its principal place of business at ....., in the County of ....., State of .....

That a meeting of the stockholders of said corporation

was duly called by resolution of its Board of Directors for the purpose of considering and acting upon the question of winding up the affairs of the corporation, paying its debts, distributing its assets, and effecting its dissolution, to be held on the ..... day of ....., at ..... o'clock ..... M., at the office of said corporation, at said town of .....; that due notice of the holding of said meeting was given, in accordance with the law, by personal service thereof upon each of its stockholders, and by publication thereof for three successive weeks prior to said date of meeting, in the ....., a newspaper of general circulation, printed and published in said County of .....

That the total number of shares of the capital stock of said corporation is ....., all of which were issued and outstanding; that on said ..... day of ....., at ..... o'clock .....M., and at the place named in said notice, a meeting of the stockholders of said corporation was held, whereat were present stockholders holding collectively ..... shares of the said stock; that at said meeting there were duly and unanimously passed and adopted by the affirmative vote of stockholders holding ..... shares, resolutions directing the dissolution of the corporation, the winding up of its affairs, and the distribution of its assets ;

That all debts, claims and demands against said corporation have been fully satisfied and discharged ; and that the sole assets of said corporation, subject to distribution among its stockholders consists of .....;

That the number of the Board of Directors of this corporation is five, and their names are as folows :

(Here insert names.)

Wherefore, Your petitioners pray that this Honorable Court will order this petition to be filed with the clerk thereof, and that the clerk give not less than thirty nor more than fifty days' notice of this application by publication thereof

printed and published in the said County of .....; that after the time of publication has expired, this Honorable Court may, upon five days' notice to any persons who have filed objections within the time prescribed by the statutes in such case made and provided, or without notice, if no objections have been filed, proceed to hear and determine this application; and after such hearing, adjudge and declare this corporation dissolved in accordance with the law in such cases made and provided.

And your petitioner will ever pray.

(DIRECTORS' NAMES.)
Directors of the Company.

DUBB & BUBB,
Attorneys for Petitioners.

State of .....
County of..... } ss

....., being duly sworn, deposes and says that he is one of the directors of t he ....., the corporation named in the foregoing petition, and as such has been, and now is the President of said corporation; that .... are the remaining directors of said corporation, and now acting as such directors with affiant, and that said directors constitute the full Board of Directors of said corporation. That affiant has heard read the foregoing petition of said corporation for the dissolution thereof, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are within stated on information and belief, and as to those matters, he believes it to be true.

(Signed.)

Subscribed and sworn, etc.

.....
.....

Form 185.

.....

PRELIMINARY ORDER UPON PRESENTATION OF PETITION.

In the ..... Court, within and for the County of ....., in the State of .....

In the matter of the application of the New Era Printing Company, a corporation, for dissolution.

The application of the New Era Printing Company, a corporation, for a decree of this Court declaring said corporation disolved, signed and verified by a majority of its Board of Directors, having been presented to this Court, and the Court being satisfied that said application is in conformity with the provisions of the statutes in such case made and provided, and governing such proceedings;

It is therefore ordered that said application be filed, and that the Clerk of this Court, upon the filing of said application, give ..... days notice of said application, by publication in the ....., a newspaper published in the County of ....., in the State of .....

Dated ..... day of ....., 190.....

.....

Judge of said Court.

.....

Form 186.

.....

PUBLISHED NOTICE OF PRELIMINARY ORDER.

In the ..... Court, within and for the County of ....., in the State of .....

In the matter of the application for the dissolution of the New Era Printing Company, a corporation.

Dept. ....., No. .....

Notice is hereby given that said corporation, the New Era Printing Company, on the ..... day of

....., 1904, made in writing a voluntary application for dissolution, to said Court;

That said Court, thereupon, to wit, on the ..... day of ....., 1904, made an order directing that said application be filed with the Clerk of said Court, and that said Clerk give ..... days' notice of said application, by publication in the ....., a newspaper published in said County, and that this notice is now given, and will be published according to said order, in said newspaper, during the period of ..... days from said ..... day of ....., 1904, the first publication being made on ....., the ..... day of ....., 1904.

Given under my hand and the seal of said ..... Court of ..... State of....., this the ..... day of ..... , 1904.

.....
Clerk.

By .....
(Seal.) Deputy.

.....

Form 187.

.....

FINAL DECREE IN DISSOLUTION.

In the ..... Court, within and for the County of ....., in the State of .....

In the matter of the application of the New Era Printing Company, a corporation, for decree of dissolution.

The application of the New Era Printing Company, a corporation, duly signed and verified by more than a majority of the members of the directors thereof, and filed herein on the 10th day of June, 1899, for a decree of this Court declaring the corporation dissolved, coming on regularly to be

heard this day in open Court,, and it appearing to the Court, upon proof introduced, that due and legal notice of said application has been given by publication for not less than thirty nor more than fifty days, to wit: for thirty-five days, in the ....., a newspaper of general circulation, published in said County of ....., State of ....., in accordance with the law and previous order of this Court; and Duncan and Steele, appearing as attorneys for said corporation on behalf of said application, and no one appearing in opposition thereto, either in person or by attorney, and no answer to said application having been filed, no objection thereto being made, and the said corporation having produced documentary and oral evidence, the Court finds the following facts as established and proved to its satisfaction :—

First, That said corporation, the said New Era Printing Company, a corporation, duly incorporated and existing under the laws of this State, and at all of the times hereinafter mentioned had, and now has, its principal place of business at the City of ....., in said County of ....., in this State.

Second. That at a meeting of the stockholders of said corporation, duly called and held, pursuant to resolution of its Board of Directors, for the purpose of considering and acting on the question of winding up the affairs of said corporation and effecting its dissolution on the ..... day of ....., A. D., ..., at the office of said corporation, at its principal place of business at said City of ....., which meeting was held in pursuant to due notice given in accordance with law, by personal service thereof, on each of their stockholders, and by publication thereof, at which meeting there were present stockholders thereof holding collectively more than two-thirds of the capital stock thereof, there was duly and unanimously passed and adopted by the affirmative vote of all of said stockholders present at said meeting, and representing, as aforesaid, more than two-thirds of the capital stock, a resolution directing the dissolution of said corporation,

the winding up of its affairs, and the distribution of its assets.

Third. That all debts, claims, and demands whatsoever against said corporation have been fully satisfied and discharged, save and except certain small incidental expenses yet to accrue, connected with the dissolution of said corporation.

Fourth. That all of the assets of said corporation, to wit: ....., have been distributed among the stockholders of this corporation, in due and proper proportion, each to as appears by the receipts signed by all of staid stockholders, acknowledging that they have respectively received the pro rata shares coming to each of them, which receipt it is ordered shall be filed herein with the papers in this proceeding.

Fifth. That all of the stockholders of said corporation have surrendered their certificates of stock, and that the same have been presented to this Court, duly cancelled.

Sixth. That the Treasurer of said corporation holds in his hands the sum of ..... dollars, estimated to be sufficient to meet the aforesaid incidental expenses yet to accrue.

Seventh. That all of the facts set forth, and all of the statements made, in said application are true, and that said corporation is entitled to have the prayer of said application granted and a decree of dissolution entered herein;

Now, therefore, it is hereby ordered, adjudged, decreed and declared that the said corportion, the New Era Printing Company, be, and the same is hereby dissolved.

Done in open Court this ..... day of .....

.....

Judge of the .....
Court.

.....

The decree is itself an acquittance and discharge from all liability, unless impeached for fraud or want of jurisdiction. And yet, as a safeguard against any

mere irregularities in the proceeding and as a better assurance of title to the property sold by the corporation in winding up, it is prudent that something more than a mere receipt be taken from the stoskholders, upon making the final distribution. The instrument should be also a satisfaction and complete acquittance of the corporation, its directors and officers from liability, and may be as follows:

Form 188.

.....

RECEIPT, RATIFICATION AND RELEASE FROM STOCKHOLDERS.

KNOW ALL MEN BY THESE PRESENTS:

That, Whereas, by certain resolutions passed and adopted by the stockholders of the New Era Printing Company, a corporation,, and by resolutions adopted respectively on the ..... day of June and the 1st day of July, 1904., the directors of said corporation were directed to make sale and disposition of the property of said corporation, and distribute its capital and assets among the stockholders, with a view to the voluntary dissolution of said corporation, and said Board of Directors have fully performed their duties in the premises, in substantial compliance, and in accordance with the resolutions aforesaid, and do now, as well for their own protection as for the better assurance of title to the real property sold and disposed of by them, request from the stockholders of said corporation a formal ratification of their several acts, and acquittance from all liability in the premises;

Now, therefore, we, the undersigned, being all of the stockholders of the said New Era Printing Company, and being fully advised in the premises, do hereby respectively declare, acknowledge and agree that we have each received from the Board of Directors and from the members of said Board, individually and collectively, our full proportionate

respective shares of all the property of said corporation constituting its capital, and the proceeds thereof, as assets upon dissolution, remaining after payment of all corporate indebtedness, expenses and costs; that the distribution of said assets has been fairly and equitably made, and we do, individually and collectively hereby assent to, ratify and confirm each and all the sales, transfers, conveyances, contracts, agreements, proceedings and actions, made, executed, entered into, had or done, by the said Board of Directors, or their predecessors in office, or by any officer, or officers of said corporation, from its organization to the present time, and especially since the first proceedings had, with a view to a voluntary dissolution of said corporation.

And, in consideration of the receipt by each of us of our several respective shares of the proceeds of the sales and transfers hereinafter described, and all other benefits accruing to us by reason of said sales and transfers, and without intending thereby to exclude from our affirmance and ratification any other acts done by said directors or officers, we do, and each of us does, hereby particularly assent to, ratify and confirm the sales, transfers and conveyances following, that is to say :

(Here describe any tract or tracts of land that may have been sold and conveyed, as that of the corporation, and specify the office, book and page of recordation.)

And we do, and each of us does, hereby release, acquit, and forever discharge the said directors and officers of said corporation, individually and collectively, their heirs, executors and assigns, of and from all claims and demands whatsoever which we now have, or could hereafter have, against them, or any of them, by reason of their acts or omissions as such directors or officers, and especially in the matter of the winding up of the business of said corporation, and distribution of its assets.

Dated, the ..... day of ....., 1904.

(Signed.) Names of all stockholders by whom assets received.

.....

Where no real estate is involved, or the title is beyond question, and there is no probability of any future dispute, a simpler and shorter receipt may be taken, as follows:

Form 189.

.....

RECEIPT FROM STOCKHOLDERS (SHORT.)

We, the undersigned, constituting all the stockholders of the New Era Printing Company, a corporation, now in process of being wound up and dissolved, hereby acknowledge that we, and each of us, have received from said corporation our proper and just distributive shares of the property and assets of said corporation.

(Signed.) Names.

.....

If the circumstances are such as to suggest the propriety of so doing, the formal receipt, ratification and affirmance might be inserted in the decree (Form 187) at the end of the paragraph numbered "Fourth," prefacing it with the words "said receipt being also a ratification and affirmance as follows:" At any rate, the receipts, whatever their form, should be filed among the papers in the proceeding.

---

[1] See Bradt v. Benedict, 17 N. Y. 73; Swan Lete Co. v. Frank, 39 Fed. R. 456.

[2] See Shields v. Ohio, 75 U. S. 319; Railroad Co. v. Georgia, 98 U. S. 359; Clearwater v. Meredith, 1 Wall (U. S.) 25; McMahon v. Morrison, 16 Ind. 172; Powell v. North Missouri R. R. Co., 42 Mo. 63; Racine, etc., R. R. Co. v. Farmers' Loan & Tr. Co., 49 Ill. 331; Charity Hospital v. New Orleans, etc., Co. (La.), 4 So. Rep. 433.

[3] See Wabash, etc., R. R. Co. v. Horn, 114 U. S. 587; State v. Merchant, 37 Ohio St. 251; Prouty v. Lake Shore, etc., R. R Co, 52 N Y. 363; Henderson v. Central Pass. Ry. Co., 21 Fed. R. 358; Kohl v. Lillienthal, 81 Cal. 378.

[4] Kelsey v. Pfauder, etc., Co., 45 Hun. 10; Rose v. Turn-

pike Co., 3 Watts (Pa.) 46; Hoboken Bldg. etc., Assn. v. Martin, 13 N. J. Eq. 427; Evarts v. Killingworth Mfg. Co., 20 Conn. 447; Nashville Bank v. Pelway, 3 Humph. (Tenn.) 522; Boston Glass Mfg. Co. v. Langdon, 24 Pick. (Mass.) 49; Cahill v. Kalamazoo, etc., Ins. Co., 2 Doug. (Mich.) 124; Phillips v. Wickham, 1 Paige (N Y.) 590; Slee v. Bloom, 5 Johns Ch. (N. Y.) 366; 19 Johns Ch. 456; St. Louis, etc., Loon Assn. v. Augustin, 2 Mo. App. 123; People v. Wren, 35 Ill. 269; Muscatine, Turn Verein v. Fuich, 18 Ia. 469.

[5] Barclay v. Talman, 4 Eda. Ch. (N. Y.) 123; Decamp v. Atwood, 52 Ind. 468; Reechwould v. Com. Hotel Co., 106 Ill. 439; Rollins v. Clay, 33 Me. 132; Kansas City Hotel Co. v. same, 65 Mo. 279; Troy, etc., R. R. Co. v. Kew, 17 Barb. (N. Y.) 581.

[6] Newton Mfg. Co. v. White, 42 Ga. 148; Sharp v. Dawes. 46 L. J. (Q. B.) 104; Button v. Hoffman, 61 Wis. 20; England v. Dearborn, 141 Mass. 509; Hopkins v. Roseclave Lead Co., 72 Ill. 373; Bellina Company's Case, 3 Bland (Md.) 442.

[7] Attorney General v. Bank, Hopkins Ch. (N. Y.) 403; Baptist Meeting House v. Nesbit, 24 Ala. 398; Kansas City, etc., Co. v. Saver, 65 Mo. 279; State v. Brown, 58 N. H. 370; West v. Carolina, etc., Co., 31 Ark. 476; Bache v. Horticultural Society, 10 Lea (Tenn.) 436; Brandon Iron Co. v. Gleason, 24 Vt. 228; Atlanta v. Gate, etc., Co., 71 Ga. 106.

[8] Mosely v. Barrows, 52 Tex. 396; Valley Bank, etc., Soc. Inst. v. Sewing Soc., 28 Kan. 423; Stat v. Merchant, 37 Ohio St. 251; National Bank v. Ins. Co., 104 U. S. 54; Kincaid v. Dwinnelle, 59 N. Y. 548.

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